United Nations

Report of the International Court of Justice

1 August 1998-31 July 1999

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I. COMPOSITION OF THE COURT

1. The present composition of the Court is as follows: President: Stephen M. Schwebel; Vice-President: Christopher G. Weeramantry; Judges: Shigeru Oda, Mohammed Bedjaoui, Gilbert Guillaume, Raymond Ranjeva, Géza Herczegh, Shi Jiuyong, Carl-August Fleischhauer, Abdul G. Koroma, Vladlen S. Vereshchetin, Rosalyn Higgins, Gonzalo Parra-Aranguren, Pieter H. Kooijmans and Francisco Rezek.

2. The Registrar of the Court is Mr. Eduardo Valencia-Ospina. The Deputy-Registrar is Mr. Jean-Jacques Arnaldez.

3. In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure. On 28 January 1999 this Chamber was constituted as follows:

Members

President, S. M. Schwebel

Vice-President, C. G. Weeramantry

Judges G. Herczegh, Shi Jiuyong and A. G. Koroma

Substitute Members

Judges R. Higgins and G. Parra-Aranguren

4. The Court's Chamber for Environmental Matters, which was instituted in 1993 and whose mandate in its present composition was extended until the next triennial elections for the Court, is composed as follows:

President, S. M. Schwebel

Vice-President C. G. Weeramantry

Judges, M. Bedjaoui, R. Ranjeva, G. Herczegh, C. A. Fleischhauer, F. Rezek

5. In the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Qatar had chosen Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc. Following Mr. Ruda's death, Qatar chose Mr. Santiago Torres Bernárdez to sit as judge ad hoc. Mr. Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings. Bahrain subsequently chose Mr. Mohamed Shahabuddeen to sit as judge ad hoc. After the resignation of Mr. Shahabuddeen, Bahrain chose Mr. Yves L. Fortier to sit as judge ad hoc.

6. In the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and (Libyan Arab Jamahiriya v. United States of America), Libya chose Mr. Ahmed Sadek El-Kosheri to sit as judge ad hoc. In the former of the two cases, in which Judge Higgins recused herself, the United Kingdom chose Sir Robert Jennings to sit as judge ad hoc.

7. In the case concerning Oil Platforms (Islamic Republic of Iran v. United States of America), Iran chose Mr. François Rigaux to sit as judge ad hoc.

8. In the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Bosnia and Herzegovina chose Mr. Elihu Lauterpacht and Yugoslavia Mr. Milenko Kreća to sit as judges ad hoc.

9. In the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

10. In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Cameroon chose Mr. Kéba Mbaye and Nigeria Mr. Bola A. Ajibola to sit as judges ad hoc.

11. In the case concerning Fisheries Jurisdiction (Spain v. Canada), Spain chose Mr. Santiago Torres Bernárdez and Canada Mr. Marc Lalonde to sit as judges ad hoc.

12. In the case concerning the Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon), Nigeria chose Mr. Bola A. Ajibola and Cameroon Mr. Kéba Mbaye to sit as judges ad hoc.

13. In the cases concerning the Legality of Use of Force (Yugoslavia v. Belgium), (Yugoslavia v. Canada), (Yugoslavia v. Italy) and (Yugoslavia v. Spain), Yugoslavia chose Mr. Milenko Kreća, Belgium Mr. Patrick Duinslaeger, Canada Mr. Marc Lalonde, Italy Mr. Giorgio Gaja and Spain Mr. Santiago Torres Bernárdez to sit as judges ad hoc.

14. It may be noted that, in the case concerning Kasikili/Sedudu Island (Botswana/Namibia), neither Botswana nor Namibia exercised its right to appoint a judge ad hoc.

II. JURISDICTION OF THE COURT

A. Jurisdiction of the Court in contentious cases

15. On 31 July 1999, the 185 States Members of the United Nations, together with Nauru and Switzerland, were parties to the Statute of the Court.

16. Sixty-two States have now made declarations (many with reservations) recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute. They are: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Cameroon, Canada, Colombia, Costa Rica, Cyprus, the Democratic Republic of Congo, Denmark, Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Greece, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, the Philippines, Poland, Portugal, Senegal, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay and Yugoslavia. The declarations of Guinea and Yugoslavia were deposited with the Secretary-General of the United Nations during the 12 months under review, on 4 December 1998 and 26 April 1999 respectively. The texts of the declarations filed by the above States will appear in Chapter IV, Section II, of the I.C.J. Yearbook 1998-1999.

17. Lists of treaties and conventions which provide for the jurisdiction of the Court will appear in Chapter IV, Section III, of the I.C.J. Yearbook 1998-1999. There are currently in force approximately 100 such multilateral conventions and approximately 160 such bilateral conventions. In addition, the jurisdiction of the Court extends to treaties or conventions in force providing for reference to the Permanent Court of International Justice (Statute, Art. 37).

B. Jurisdiction of the Court in advisory proceedings

18. In addition to the United Nations (General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly), the following organizations are at present authorized to request advisory opinions of the Court on legal questions arising within the scope of their activities:

International Labour Organisation;

Food and Agriculture Organization of the United Nations;

United Nations Educational, Scientific and Cultural Organization;

International Civil Aviation Organization;

World Health Organization;

World Bank;

International Finance Corporation;

International Development Association;

International Monetary Fund;

International Telecommunication Union;

World Meteorological Organization;

International Maritime Organization;

World Intellectual Property Organization;

International Fund for Agricultural Development;

United Nations Industrial Development Organization;

International Atomic Energy Agency.

19. The international instruments which make provision for the advisory jurisdiction of the Court will be listed in Chapter IV, Section I, of the I.C.J. Yearbook 1998-1999

III. JUDICIAL WORK OF THE COURT

20. During the period under review the Court was seised of the following eighteen new contentious cases: Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon), Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), LaGrand (Germany v. United States of America), Legality of Use of Force

(Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. Spain) (Yugoslavia v. United Kingdom) and (Yugoslavia v. United States of America), Democratic Republic of the Congo against Burundi, against Uganda and against Rwanda, and Croatia against Yugoslavia. The Court also received a request for an Advisory Opinion from the Economic and Social Council: Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights.

21. On 16 February 1999, Eritrea filed an Application in a dispute with Ethiopia concerning the alleged violation of the premises and of the staff of Eritrea's diplomatic mission in Addis Ababa. In filing its Application, Eritrea stated that "it does not appear that Ethiopia has at the present time given its consent for the Court to be seised of jurisdiction in this case". It invited Ethiopia to accept that jurisdiction. Eritrea's Application, which was accompanied by a request for the indication of provisional measures, was transmitted to the Government of Ethiopia. However, as Ethiopia, as of 31 July 1999 had not given its consent to the Court's jurisdiction, the Court has not taken any action in the proceedings.

22. In the case concerning Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Slovakia filed a request for an additional Judgment. In the case concerning LaGrand (Germany v. United States of America) and in the ten cases concerning Legality of Use of Force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. Spain) (Yugoslavia v. United Kingdom) and (Yugoslavia v. United States of America), requests for the indication of provisional measures were made by the respective Applicant States. In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Nigeria, in its Counter-Memorial, presented counter-claims; Equatorial Guinea made a request for permission to intervene. The case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), was discontinued at the request of Paraquay and removed from the List.

23. The Court held 44 public sittings and a great number of private meetings. It delivered a Judgment, on the Court's jurisdiction, in the case concerning Fisheries Jurisdiction (Spain v. Canada), as well as a Judgment on the Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon). It rendered an Advisory Opinion in the case concerning the Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. The Court further made Orders on the requests for the indication of provisional measures made by Germany in the case concerning LaGrand (Germany v. United States of America), and by Yugoslavia in the cases concerning the Legality of Use of Force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. Spain) (Yugoslavia v. United Kingdom) and (Yugoslavia v. United States of America). It made an Order on the counter-claims presented by Nigeria in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria). The Court also made Orders regarding the conduct of proceedings in the cases concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Oil Platforms (Islamic Republic of Iran v. United States of America), Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Vienna Convention on Consular Relations (Paraguay v. United States of America), Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), LaGrand (Germany v. United States of America), and Legality of Use of Force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal)

(Yugoslavia v. Spain) (Yugoslavia v. United Kingdom) and (Yugoslavia v. United States of America).

24. The Senior Judge, Acting President, made Orders for the conduct of the proceedings in the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) and Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights.

A. Contentious Cases

1. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)

25. On 8 July 1991, the Government of the State of Qatar filed in the Registry of the Court an Application instituting proceedings against the Government of the State of Bahrain

> "in respect of certain existing disputes between them relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States"

26. Qatar claimed that its sovereignty over the Hawar islands was well founded on the basis of customary international law and applicable local practices and customs. It had therefore continuously opposed a decision announced by the British Government in 1939, during the time of the British presence in Bahrain and Qatar (which came to an end in 1971), that the islands belonged

to Bahrain. This decision was, in the view of Qatar, invalid, beyond the power of the British in relation to the two States, and not binding on Qatar.

27. With regard to the shoals of Dibal and Qit'at Jaradah, a further decision of the British Government in 1947 to delimit the sea-bed boundary between Bahrain and Qatar purported to recognize that Bahrain had "sovereign rights" in the areas of those shoals. In that decision the view was expressed that the shoals should not be considered to be islands having territorial waters. Qatar had claimed and continued to claim that such sovereign rights as existed over the shoals belonged to Qatar; it also considered however that these were shoals and not islands. Bahrain claimed in 1964 that Dibal and Qit'at Jaradah were islands possessing territorial waters, and belonged to Bahrain, a claim rejected by Qatar.

28. With regard to the delimitation of the maritime areas of the two States, in the letter informing the Rulers of Qatar and Bahrain of the 1947 decision it was stated that the British Government considered that the line divided "in accordance with equitable principles" the sea-bed between Qatar and Bahrain, and that it was a median line based generally on the configuration of the coastline of the Bahrain main island and the peninsula of Qatar. The letter further specified two exceptions. One concerned the status of the shoals; the other that of the Hawar islands.

29. Qatar stated that it did not oppose that part of the delimitation line which the British Government stated was based on the configuration of the coastlines of the two States and was determined in accordance with equitable principles. It had been rejecting and still rejected the claim made in 1964 by Bahrain (which had refused to accept the above-mentioned delimitation by the British Government) of a new line delimiting the sea-bed boundary of the two States. Qatar based its claims with respect to delimitation on customary international law and applicable local practices and customs.

30. The State of Qatar therefore requested the Court:

"I. To adjudge and declare in accordance with international law

(a) that the State of Qatar has sovereignty over the Hawar islands; and

(b) that the State of Qatar has sovereign rights over Dibal and Qit'at Jaradah shoals; and

II. With due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain."

31. In the Application, Qatar founded the jurisdiction of the Court upon certain agreements between the Parties stated to have been concluded in December 1987 and December 1990, the subject and scope of the commitment to jurisdiction being determined, according to Qatar, by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990.

32. By letters addressed to the Registrar of the Court on 14 July 1991 and 18 August 1991, Bahrain contested the basis of jurisdiction invoked by Qatar.

33. At a meeting held on 2 October 1991 to enable the President of the Court to ascertain their views, the Parties reached agreement as to the desirability of the proceedings being initially devoted to the questions of the Court's jurisdiction to entertain the dispute and the admissibility of the Application. The President accordingly made, on 11 October 1991, an Order (I.C.J. Reports 1991, p. 50) deciding that the written proceedings should first be addressed to those questions; in the same Order he fixed the following time-limits in accordance with a further agreement reached between the Parties at the meeting of 2 October: 10 February 1992 for the Memorial of Qatar, and 11 June 1992 for the Counter-Memorial of Bahrain. The Memorial and Counter-Memorial were filed within the prescribed time-limits.

34. By an Order of 26 June 1992 (I.C.J. Reports 1992, p. 237), the Court, having ascertained the views of the Parties, directed that a Reply by the Applicant and a Rejoinder by the Respondent

be filed on the questions of jurisdiction and admissibility. It fixed 28 September 1992 as the time-limit for the Reply of Qatar and 29 December 1992 for the Rejoinder of Bahrain. Both the Reply and the Rejoinder were filed within the prescribed time-limits.

35. Qatar chose Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc. Following Mr. Ruda's death, Qatar chose Mr. Santiago Torres Bernárdez to sit as judge ad hoc.

36. Oral proceedings were held from 28 February to 11 March 1994. In the course of eight public sittings, the Court heard statements on behalf of Qatar and Bahrain.

37. At a public sitting held on 1 July 1994, the Court delivered a Judgment (I.C.J. Reports 1994, p. 112) by which it found that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed "Minutes" and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, were international agreements creating rights and obligations for the Parties; and that, by the terms of those agreements, the Parties had undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the Bahraini formula. Having noted that it had before it only an Application from Qatar setting out that State's specific claims in connection with that formula, the Court decided to afford the Parties the opportunity to submit to it the whole of the dispute. It fixed 30 November 1994 as the time-limit within which the Parties were jointly or separately to take action to that end and reserved any other matters for subsequent decision.

38. Judge Shahabuddeen appended a declaration to the Judgment; Vice-President Schwebel and Judge ad hoc Valticos appended separate opinions; and Judge Oda appended his dissenting opinion.

39. On 30 November 1994, the date fixed in the Judgment of 1 July, the Court received from the Agent of Qatar a letter transmitting an "Act to comply with paragraphs (3) and (4) of the operative paragraph 41 of the Judgment of the Court dated 1 July 1994". On the same day, the Court received a communication from the Agent of Bahrain, transmitting the text of a document entitled "Report of the State of Bahrain to the International Court of Justice on the Attempt by the Parties to Implement the Court's Judgment of 1st July, 1994".

40. In view of those communications, the Court resumed dealing with the case.

41. At a public sitting held on 15 February 1995, the Court delivered a Judgment on jurisdiction and admissibility (I.C.J. Reports 1995, p. 6) by which it found that it had jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain and that the Application of the State of Qatar as formulated on 30 November 1994 was admissible.

42. Vice-President Schwebel, Judges Oda, Shahabuddeen and Koroma, and Judge ad hoc Valticos appended dissenting opinions to the Judgment.

43. Judge ad hoc Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings.

44. By an Order of 28 April 1995, (I.C.J. Reports 1995, p. 83), the Court, having ascertained the views of Qatar and having given Bahrain an opportunity of stating its views, fixed 29 February 1996 as the time-limit for the filing by each of the Parties of a Memorial on the merits. On the request of Bahrain, and after the views of Qatar had been ascertained, the Court, by an Order of 1 February 1996 (I.C.J. Reports 1996, p. 6), extended that time-limit to 30 September 1996. The two Memorials were filed within the thus extended time-limit.

45. By an Order of 30 October 1996 (I.C.J. Reports 1996, p. 800), the President of the Court, taking into account the views of the Parties, fixed 31 December 1997 as the time-limit for the filing by each of the Parties of a Counter-Memorial on the merits.

46. As Judge ad hoc Valticos had resigned, Bahrain chose Mr. Mohamed Shahabuddeen to sit as judge ad hoc. After Judge ad hoc Shahabuddeen had, in his turn, resigned, Bahrain chose Mr. Yves L. Fortier to sit as judge ad hoc.

47. By a letter dated 25 September 1997 Bahrain informed the Court that it challenged the authenticity of 82 documents produced by Qatar as annexes to its Memorial and on which Qatar's Memorial relied, and submitted detailed analyses in support of its challenge. Stating that the matter was "distinct and severable from the merits", Bahrain announced that it would disregard the content of these documents for the purposes of preparing its Counter-Memorial.

48. By a letter of 8 October 1997, Qatar stated that in its view the objections raised by Bahrain were linked to the merits, but that the Court could not "expect Qatar, at the present stage of preparation of its own Counter-Memorial, to comment on the detailed Bahraini allegations".

49. After Bahrain, in a subsequent letter, had stated that the use by Qatar of the challenged documents gave rise to "procedural difficulties that strike at the fundamentals of the orderly development of the case" and that a new development, relevant to assessment of the authenticity of the documents concerned had taken place, the President of the Court held, on 25 November 1997, a meeting with the Parties at which it was agreed inter alia that the Counter-Memorials would not deal with the question of the authenticity of the documents produced by Qatar and that other pleadings would be submitted by the Parties at a later date.

50. The Counter-Memorials of the Parties were duly filed and exchanged on 23 December 1997.

51. On 17 March 1998 the President held a further meeting to ascertain the views of the parties on the subsequent procedure. Qatar suggested the prescription by the Court of the filing of a Reply by each of the Parties at the end of March 1999, in which case it would be able to annex to its Reply a comprehensive report on the question of the authenticity of the documents; it moreover proposed to submit to the Court, by the end of September 1998, an interim report on that question to which Bahrain would be able to respond in its Reply. Bahrain did not object to the procedure envisaged by Qatar as either unreasonable or unjust.

52. By an Order of 30 March 1998 (I.C.J. Reports 1998, p. 243), the Court then fixed 30 September 1998 as the time-limit for the filing of an interim report by Qatar on the authenticity of each of the challenged documents and directed the filing of a Reply by each of the Parties within the time-limit of 30 March 1999.

53. The interim report of Qatar was filed within the prescribed time-limit. In the conclusion Qatar stated that it had decided that it would "disregard all the 82 challenged documents for the purposes of the present case so as to enable the Court to address the merits of the case without further procedural complications". It did so because "on the one hand . . ., on the question of the material authenticity of the documents, there were differing views not only between the respective experts of the Parties, but also between its own experts, and, on the other hand . . ., as far as the historical aspects were concerned, the experts that it had consulted considered that Bahrain's assertions showed exaggerations and distortions. The Agent of Bahrain, in a letter of 27 November 1998, referred to "the effective abandonment by Qatar of all of the impeached documents . . .", concluding that Qatar could not make any further reference to the documents concerned, that it would not adduce the content of these documents in connection with any of its arguments and that, in general, the merits of the case would be adjudicated by the Court without regard to these documents. In a letter of 1 February 1999, the Agent of Qatar confirmed that the position adopted by Qatar in its interim report was definitive.

54. After Qatar had, in December 1998, requested "a two-month extension of the time-limit for the filing of a Reply by each of the Parties, to 30 May 1999", the Court, taking into account the concordant views of the Parties on treatment of the disputed documents and their agreement on the extension of time-limits for the filing of Replies as expressed in an exchange of letters, made an Order on 17 February 1999 (I.C.J. Reports 1999, p. 3) placing on record Qatar's decision to disregard the 82 documents challenged by Bahrain, deciding that the Replies would not rely on these documents and extending the time-limit for the submission of those Replies to 30 May 1999. Both Replies were filed within that time-limit.

2, 3. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)

and

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)

55. On 3 March 1992 the Government of the Socialist People's Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United Kingdom of Great Britain and Northern Ireland and against the United States of America in respect of a dispute over the interpretation and application of the Montreal Convention of 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988.

56. In the Applications, Libya referred to the charging and indictment of two Libyan nationals by the Lord Advocate of Scotland and by a Grand Jury of the United States respectively, for having caused a bomb to be placed aboard the Pan-American flight 103. The bomb subsequently exploded, causing the aeroplane to crash, as a consequence of which 270 persons were killed.

57. Libya contended that the acts alleged constituted an offence within the meaning of Article 1 of the Montreal Convention, which it claimed to be the only appropriate convention in force between the Parties, and claimed that it had fully complied with its own obligations under that instrument, Article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; there was no extradition treaty between Libya and the respective other Parties, and Libya was obliged under Article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution.

58. Libya contended that the United Kingdom and the United States were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law, including the Convention itself, in that they were placing pressure upon Libya to surrender the two Libyan nationals for trial.

59. According to the Applications, it had not been possible to settle by negotiation the disputes that had thus arisen, neither had the Parties been able to agree upon the organization of arbitration to hear the matter. The Libyan Arab Jamahiriya therefore submitted the disputes to the Court on the basis of Article 14, paragraph 1, of the Montreal Convention.

60. Libya requested the Court to adjudge and declare as follows:

(a) that Libya has fully complied with all of its obligations under the Montreal Convention;

(b) that the United Kingdom and the United States respectively have breached, and are continuing to breach, their legal obligations to Libya under Articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and

(c) that the United Kingdom and the United States respectively are under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or

threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.

61. Later the same day, Libya made two separate requests to the Court to indicate forthwith the following provisional measures:

(a) to enjoin the United Kingdom and the United States respectively from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to any jurisdiction outside of Libya; and

(b) to ensure that no steps are taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that are the subject of Libya's Applications.

62. In those requests Libya also requested the President, pending the meeting of the Court, to exercise the power conferred on him by Article 74, paragraph 4, of the Rules of Court, to call upon the Parties to act in such a way as to enable any Order the Court might make on Libya's request for provisional measures to have its appropriate effects.

63. By a letter of 6 March 1992, the Legal Adviser of the United States Department of State, referring to the specific request made by Libya under Article 74, paragraph 4, of the Rules of Court, in its request for the indication of provisional measures, stated inter alia that

> "taking into account both the absence of any concrete showing of urgency relating to the request and developments in the ongoing action by the Security Council and the Secretary-General in this matter ... the action requested by Libya ... is unnecessary and could be misconstrued".

64. Libya chose Mr. Ahmed S. El-Kosheri to sit as judge ad hoc in both cases.

65. At the opening of the hearings on the request for the indication of provisional measures on 26 March 1992, the Vice-President of the Court, exercising the functions of the presidency in the case, referred to the request made by Libya under Article 74, paragraph 4, of the Rules of Court and stated that, after the most careful consideration of all the circumstances then known to him, he had come to the conclusion that it would not be appropriate for him to exercise the discretionary power conferred on the President by that provision. At five public sittings held on 26, 27 and 28 March 1992, both Parties in each of the two cases presented oral arguments on the request for the indication of provisional measures.

66. At a public sitting held on 14 April 1992, the Court read the two Orders on the requests for indication of provisional measures filed by Libya (I.C.J. Reports 1992, pp. 3 and 114), in which it found that the circumstances of the case were not such as to require the exercise of its power to indicate such measures.

67. Acting President Oda and Judge Ni each appended a declaration to the Orders of the Court; Judges Evensen, Tarassov, Guillaume and Aguilar Mawdsley appended a joint declaration. Judges Lachs and Shahabuddeen appended separate opinions; and Judges Bedjaoui, Weeramantry, Ranjeva, Ajibola and Judge ad hoc El-Kosheri appended dissenting opinions to the Orders.

68. By Orders of 19 June 1992 (I.C.J. Reports 1992, pp. 231 and 234), the Court, taking into account that the length of time-limits had been agreed by the Parties at a meeting held on 5 June 1992 with the Vice-President of the Court, exercising the function of the presidency in the two cases, fixed 20 December 1993 as the time-limit for the filing of the Memorials of Libya and 20 June 1995 for the filing of the Counter-Memorials of the United Kingdom and the United States of America. The Memorials were filed within the prescribed time-limit.

69. On 16 and on 20 June 1995 respectively the United Kingdom and the United States of America filed preliminary objections to the jurisdiction of the Court to entertain the Applications of the Libyan Arab Jamahiriya.

70. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provision of that Article.

71. After a meeting had been held, on 9 September 1995, between the President of the Court and the Agents of the Parties to ascertain the latters' views, the Court, by Orders of 22 September 1995 (I.C.J. Reports 1995, p. 282 and 285), fixed, in each case, 22 December 1995 as the time-limit within which the Libyan Arab Jamahiriya might present a written statement of its observations and submissions on the preliminary objections raised by the United Kingdom and the United States of America respectively. Libya filed such statements within the prescribed time-limits.

72. The Secretary-General of the International Civil Aviation Organization, which had, in accordance with Article 34, paragraph 3, of the Statute, been informed that [illegible] interpretation of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aircraft, concluded in Montreal on 23 September 1971, was in issue in the two cases, and been communicated copies of the written proceedings, informed the Court that the Organization had "no observation to make for the time being", requesting, however, to be kept informed of the developments of the two cases, in order to determine whether it would be appropriate to submit observations at a later stage.

73. Judge Higgins having recused herself, the United Kingdom chose Sir Robert Jennings to sit as judge ad hoc.

74. Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by the United Kingdom and the United States of America were held from 13 to 22 October 1997.

75. At public sittings held on 27 February 1998, the Court delivered the two Judgments on the preliminary objections (I.C.J. Reports 1998, pp. 9 and 115 respectively), by which it rejected the objection to jurisdiction raised by the United Kingdom and the United States of America respectively on the basis of the alleged absence of a dispute between the Parties concerning the interpretation or application of the Montreal Convention of 23 September 1971; found that it had jurisdiction, on the basis of Article 14, paragraph 1 of that Convention, to hear the disputes between Libya and the United Kingdom and Libya and the United States of America respectively as to the interpretation or application of the provisions of that Convention; rejected the objection to admissibility derived by the United Kingdom and the United States of America respectively from Security Council resolutions 748 (1992) and 883 (1993); found that the Applications filed by Libya on 3 March 1992 were admissible; and declared that the objection raised by each of the Respondent States according to which Security Council resolutions 748 (1992) and 883 (1993) had rendered the claims of Libya without object did not, in the circumstances of the case, have an exclusively preliminary character.

76. Joint declarations were appended to the Judgment in the case of Libya v. the United Kingdom by Judges Bedjaoui, Guillaume and Ranjeva; by Judges Bedjaoui, Ranjeva and Koroma; and by Judges Guillaume and Fleischhauer; Judge Herczegh also appended a declaration to the Judgment of the Court. Judges Kooijmans and Rezek appended separate opinions to the Judgment. President Schwebel, Judge Oda and Judge ad hoc Sir Robert Jennings appended dissenting opinions.

77. In the case of Libya v. the United States of America joint declarations were appended to the Judgment by Judges Bedjaoui, Ranjeva and Koroma; and by Judges Guillaume and Fleischhauer; Judge Herczegh also appended a declaration to the Judgment of the Court. Judges

Kooijmans and Rezek appended separate opinions to the Judgment. President Schwebel and Judge Oda appended dissenting opinions.

78. By Orders of 30 March 1998 (I.C.J. Reports 1998, pp. 237 and 240 respectively), the Court fixed 30 December 1998 as the time-limit for the filing of the Counter-Memorials of the United Kingdom and the United States of America respectively. Upon a proposal of the United Kingdom and of the United States respectively, who referred to diplomatic initiatives undertaken shortly before, and after the views of Libya had been ascertained, the Senior Judge, Acting President, of the Court extended by Orders of 17 December 1998 that time-limit by three months to 31 March 1999. The Counter-Memorials were filed within the time-limit thus extended.

79. By Orders of 29 June 1999, the Court, taking account of the agreement of the Parties and the special circumstances of the case, authorized the submission of a Reply by Libya and a Rejoinder by the United Kingdom and the United States of America respectively, fixing 29 June 2000 as the time-limit for the filing of Libya's Reply. The Court fixed no date for the filing of the Rejoinders; the representatives of the Respondent States had expressed the desire that no such date be fixed at this stage of the proceedings, "in view of the new circumstances consequent upon the transfer of the two accused to the Netherlands for trial by a Scottish court".

4. Oil Platforms (Islamic Republic of Iran v. United States of America)

80. On 2 November 1992 the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America in respect of a dispute concerning the destruction of three Iranian oil platforms.

81. The Islamic Republic founded the jurisdiction of the Court for the purposes of these proceedings on Article XXI (2) of the Iran/United States Treaty of Amity, Economic Relations and Consular Rights, signed at Tehran on 15 August 1955.

82. In its Application Iran alleged that the destruction caused by several warships of the United States Navy, on 19 October 1987 and 18 April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law. In this connection Iran referred in particular to Articles I and X (1) of the Treaty which provide respectively: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran", and "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

83. The Islamic Republic accordingly requested the Court to adjudge and declare as follows:

"(a) That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;

(b) That in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, inter alia, under Articles I and X(1) of the Treaty of Amity and international law;

(c) That in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including Articles I and X(1), and international law;

(d) That the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and

(e) Any other remedy the Court may deem appropriate."

84. By an Order of 4 December 1992 (I.C.J. Reports 1992, p. 763), the President of the Court, taking into account an agreement of the Parties, fixed 31 May 1993 as the time-limit for the

filing of the Memorial of Iran and 30 November 1993 for the filing of the Counter-Memorial of the United States.

85. By an Order of 3 June 1993 (I.C.J. Reports 1993, p. 35) the President of the Court, upon the request of Iran and after the United States had indicated that it had no objection, extended those time-limits to 8 June and 16 December 1993, respectively. The Memorial was filed within the prescribed time-limit.

86. The Islamic Republic of Iran chose Mr. François Rigaux to sit as judge ad hoc.

87. On 16 December 1993, within the extended time-limit for the filing of the Counter-Memorial, the United States of America filed a preliminary objection to the Court's jurisdiction. In accordance with the terms of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended; by an Order of 18 January 1994 (I.C.J. Reports 1994, p. 3), the Court fixed 1 July 1994 as the time-limit within which Iran could present a written statement of its observations and submissions on the objection. That written statement was filed within the prescribed time-limit.

88. Public sittings to hear the oral arguments of the Parties on the preliminary objection filed by the United States of America were held between 16 and 24 September 1996.

89. At a public sitting held on 12 December 1996, the Court delivered its Judgment on the preliminary objection raised by the United States (I.C.J. Reports 1996, p. 803), rejecting that objection and finding that it had jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by Iran under Article X, paragraph 1, of that Treaty.

90. Judges Shahabuddeen, Ranjeva, Higgins and Parra-Aranguren and Judge ad hoc Rigaux appended separate opinions to the Judgment of the Court; Vice-President Schwebel and Judge Oda appended dissenting opinions.

91. By an Order of 16 December 1996 (I.C.J. Reports 1996, p. 902), the President of the Court, taking into account agreement of the Parties, fixed 23 June 1997 as the time-limit for the filing of the Counter-Memorial of the United States of America. Within the time-limit thus fixed the United States filed the Counter-Memorial and a Counter-Claim, requesting the Court to adjudge and declare:

> "1. That in attacking vessels, laying mines in the Gulf and otherwise engaging in military actions in 1987-88 that were dangerous and detrimental to maritime commerce, the Islamic Republic of Iran breached its obligations to the United States under Article X of the 1955 Treaty, and
>
> 2. That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for violating the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings."

92. By a letter of 2 October 1997 Iran informed the Court that it had "serious objections to the admissibility of the United States counter-claim", taking the position that the counter-claim as formulated by the United States did not meet the requirements of Article 80, paragraph 1, of the Rules of Court.

93. At a meeting which the Vice-President of the Court, Acting President, held on 17 October 1997 with the Agents of the Parties it was agreed that their respective Governments would submit written observations on the question of the admissibility of the United States counter-claim.

94. After Iran and the United States, in communications dated 18 November and 18 December 1997 respectively, had submitted these written observations the Court, by an Order of 10 March 1998 (I.C.J. Reports 1998, p. 190), found that the counter-claim presented by the

United States in its Counter-Memorial was admissible as such and formed part of the proceedings. It further directed Iran to submit a Reply and the United States to submit a Rejoinder, fixing the time-limits for those pleadings at 10 September 1998 and 23 November 1999 respectively. Judges Oda and Higgins appended separate opinions to the Order; Judge ad hoc Rigaux appended a dissenting opinion.

95. By an Order of 26 May 1998 (I.C.J. Reports 1998, p. 269), the Vice-President of the Court, Acting President, extended, at the request of Iran and taking into account the views expressed by the United States, the time-limits for Iran's Reply and the United States' Rejoinder to 10 December 1998 and 23 May 2000 respectively. By an Order of 8 December 1998 the Court further extended those time-limits to 10 March 1999 for Iran's Reply and 23 November 2000 for the United States' Rejoinder. Iran's Reply was filed within the time-limit thus extended.

5. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)

96. On 20 March 1993, the Republic of Bosnia and Herzegovina filed in the Registry of the International Court of Justice an Application instituting proceedings against the Federal Republic of Yugoslavia "for violating the Genocide Convention".

97. The Application referred to several provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, as well as of the Charter of the United Nations, which Bosnia and Herzegovina alleged were violated by Yugoslavia. It also referred in this respect to the four Geneva Conventions of 1949 and their Additional Protocol I of 1977, to the Hague Regulations on Land Warfare of 1907, and to the Universal Declaration of Human Rights.

98. The Application referred to Article IX of the Genocide Convention as the basis for the jurisdiction of the Court.

99. In the Application, Bosnia and Herzegovina requested the Court to adjudge and declare:

"(a) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the People and State of Bosnia and Herzegovina under Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention;

(b) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the People and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;

(c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina;

(d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so;

(e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its solemn obligations under Articles 1 (3), 55 and 56 of the United Nations Charter;

(f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2 (1), 2 (2), 2 (3), 2 (4), and 33 (1), of the United Nations Charter;

(g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;

(h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

— armed attacks against Bosnia and Herzegovina by air and land;

— aerial trespass into Bosnian airspace;

— efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;

(i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina;

(j) that Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty obligations under Article 2 (4) of the United Nations Charter, as well as its obligations under general and customary international law;

(k) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend Itself and its People under United Nations Charter Article 51 and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;

(l) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under United Nations Charter Article 51 and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment supplies, troops, etc.);

(m) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(n) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(o) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24 (1) and 51 of the United Nations Charter and in accordance with the customary doctrine of ultra vires;

(p) that pursuant to the right of collective self-defence recognized by United Nations Charter Article 51, all other States Parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing It with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.);

(q) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

— from its systematic practice of so-called 'ethnic cleansing' of the citizens and sovereign territory of Bosnia and Herzegovina;

— from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;

— from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina;

— from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

— from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

— from the starvation of the civilian population in Bosnia and Herzegovina;

— from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;

— from all use of force — whether direct or indirect, overt or covert — against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;

— from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;

— from all support of any kind — including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina;

(r) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as parens patriae for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro)."

100. On the same day, the Government of Bosnia and Herzegovina, stating that:

"The overriding objective of this Request is to prevent further loss of human life in Bosnia and Herzegovina",

and that:

"The very lives, well-being, health, safety, physical, mental and bodily integrity, homes, property and personal possessions of hundreds of thousands of people in Bosnia and Herzegovina are right now at stake, hanging in the balance, awaiting the order of this Court",

filed a request for the indication of provisional measures under Article 41 of the Statute of the Court.

101. The provisional measures requested were as follows:

"1. That Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, must immediately cease and desist from all acts of genocide and genocidal acts against the People and State of Bosnia and Herzegovina, including but not limited to murder; summary executions; torture; rape; mayhem; so-called 'ethnic cleansing'; the wanton devastation of villages, towns, districts and cities; the siege of villages, towns, districts and cities; the starvation of the civilian population; the interruption of, interference with, or harassment of humanitarian relief supplies to the civilian population by the international community; the bombardment of civilian population centres; and the detention of civilians in concentration camps or otherwise.

2. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support — including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement, militia or individual engaged in or planning to engage in military or paramilitary activities in or against the People, State and Government of Bosnia and Herzegovina.

3. That Yugoslavia (Serbia and Montenegro) itself must immediately cease and desist from any and all types of military or paramilitary activities by its own officials, agents, surrogates, or forces in or against the People, State and Government of Bosnia and Herzegovina, and from any other use or threat of force in its relations with Bosnia and Herzegovina.

4. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to seek and receive support from other States in order to defend Itself and its People, including by means of immediately obtaining military weapons, equipment, and supplies.

5. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to request the immediate assistance of any State to come to its defence, including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.).

6. That under the current circumstances, any State has the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, and airpeople, etc.)."

102. Hearings on the request for the indication of provisional measures were held on 1 and 2 April 1993. At two public sittings the Court heard the oral observations of each of the Parties.

103. At a public sitting held on 8 April 1993, the President of the Court read out the Order on the request for provisional measures made by Bosnia and Herzegovina (I.C.J. Reports 1993, p. 3) by which the Court indicated, pending its final decision in the proceedings instituted on

20 March 1993 by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia, the following provisional measures:

(a) The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide; and the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group.

(b) The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution.

104. Judge Tarassov appended a declaration to the Order (ibid., pp. 26-27).

105. By an Order of 16 April 1993 (I.C.J. Reports 1993, p. 29) the President of the Court, taking into account an agreement of the Parties, fixed 15 October 1993 as the time-limit for the filing of the Memorial of Bosnia and Herzegovina and 15 April 1994 for the filing of the Counter-Memorial of Yugoslavia.

106. Bosnia and Herzegovina chose Mr. Elihu Lauterpacht and Yugoslavia Mr. Milenko Kreća to sit as judges ad hoc.

107. On 27 July 1993 the Republic of Bosnia and Herzegovina filed a second request for the indication of provisional measures, stating that:

> "This extraordinary step is being taken because the Respondent has violated each and everyone of the three measures of protection on behalf of Bosnia and Herzegovina that were indicated by this Court on 8 April 1993, to the grave detriment of both the People and State of Bosnia and Herzegovina. In addition to continuing its campaign of genocide against the Bosnian People — whether Muslim, Christian, Jew, Croat or Serb — the Respondent is now planning, preparing, conspiring to, proposing, and negotiating the partition, dismemberment, annexation and incorporation of the sovereign state of Bosnia and Herzegovina — a Member of the United Nations Organization — by means of genocide."

108. The provisional measures then requested were as follows:

> "1. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support — including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement, military, militia or paramilitary force, irregular armed unit, or individual in Bosnia and Herzegovina for any reason or purpose whatsoever.
>
> 2. That Yugoslavia (Serbia and Montenegro) and all of its public officials — including and especially the President of Serbia, Mr. Slobodan Milosevic — must immediately cease and desist from any and all efforts, plans, plots, schemes, proposals or negotiations to partition, dismember, annex or incorporate the sovereign territory of Bosnia and Herzegovina.
>
> 3. That the annexation or incorporation of any sovereign territory of the Republic of Bosnia and Herzegovina by Yugoslavia (Serbia and Montenegro) by any means or for any reason shall be deemed illegal, null, and void ab initio.
>
> 4. That the Government of Bosnia and Herzegovina must have the means 'to prevent' the commission of acts of genocide against its own People as required by Article I of the Genocide Convention.
>
> 5. That all Contracting Parties to the Genocide Convention are obliged by Article I thereof 'to prevent' the commission of acts of genocide against the People and State of Bosnia and Herzegovina.
>
> 6. That the Government of Bosnia and Herzegovina must have the means to defend the People and State of Bosnia and Herzegovina from acts of genocide and partition and dismemberment by means of genocide.

7. That all Contracting Parties to the Genocide Convention have the obligation thereunder 'to prevent' acts of genocide, and partition and dismemberment by means of genocide, against the People and State of Bosnia and Herzegovina.

8. That in order to fulfil its obligations under the Genocide Convention under the current circumstance, the Government of Bosnia and Herzegovina must have the ability to obtain military weapons, equipment, and supplies from other Contracting Parties.

9. That in order to fulfil their obligations under the Genocide Convention under the current circumstances, all Contracting Parties thereto must have the ability to provide military weapons, equipment, supplies and armed forces (soldiers, sailors, airpeople) to the Government of Bosnia and Herzegovina at its request.

10. That United Nations Peacekeeping Forces in Bosnia and Herzegovina (i.e., UNPROFOR) must do all in their power to ensure the flow of humanitarian relief supplies to the Bosnian People through the Bosnian city of Tuzla."

109. On 5 August 1993 the President of the Court addressed a message to both Parties, referring to Article 74, paragraph 4, of the Rules of Court, which enables him, pending the meeting of the Court, "to call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects", and stating:

"I do now call upon the Parties so to act, and I stress that the provisional measures already indicated in the Order which the Court made after hearing the Parties, on 8 April 1993, still apply.

Accordingly I call upon the Parties to take renewed note of the Court's Order and to take all and any measures that may be within their power to prevent any commission, continuance, or encouragement of the heinous international crime of genocide."

110. On 10 August 1993 Yugoslavia filed a request, dated 9 August 1993, for the indication of provisional measures, whereby it requested the Court to indicate the following provisional measure:

"The Government of the so-called Republic of Bosnia and Herzegovina should immediately, in pursuance of its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide against the Serb ethnic group."

111. The hearings concerning the requests for the indication of provisional measures were held on 25 and 26 August 1993. In the course of two public sittings the Court heard statements from each of the Parties.

112. At a public sitting held on 13 September 1993, the President of the Court read out the Order concerning requests for the indication of provisional measures (I.C.J. Reports 1993, p. 325) by which the Court reaffirmed the provisional measures indicated in its Order of 8 April 1993, which measures, the Court stated, should be immediately and effectively implemented.

113. Judge Oda appended a declaration to the Order; Judges Shahabuddeen, Weeramantry and Ajibola and Judge ad hoc Lauterpacht appended their individual opinions; and Judge Tarassov and Judge ad hoc Kreća appended their dissenting opinions.

114. By an Order of 7 October 1993 (I.C.J. Reports 1993, p. 470), the Vice-President of the Court, at the request of Bosnia and Herzegovina and after Yugoslavia had expressed its opinion, extended to 15 April 1994 the time-limit for the filing of the Memorial of Bosnia and Herzegovina, and to 15 April 1995 the time-limit for the filing of the Counter-Memorial of Yugoslavia. The Memorial was filed within the prescribed time-limit.

115. By an Order of 21 March 1995 (I.C.J. Reports 1995, p. 80), the President of the Court, upon a request of the Agent of Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, extended to 30 June 1995 the time-limit for the filing of the Counter-Memorial of Yugoslavia.

116. On 26 June 1995, within the extended time-limit for the filing of its Counter-Memorial, Yugoslavia, filed certain preliminary objections in the above case. The objections related, firstly, to the admissibility of the Application and, secondly, to the jurisdiction of the Court to deal with the case.

117. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized

for the consideration of those preliminary objections in accordance with the provision of that Article.

118. By an Order of 14 July 1995 (I.C.J. Reports 1995, p. 279), the President of the Court, taking into account the views expressed by the Parties, fixed 14 November 1995 as the time-limit within which the Republic of Bosnia and Herzegovina might present a written statement of its observations and submissions on the preliminary objections raised by the Federal Republic of Yugoslavia. Bosnia and Herzegovina filed such a statement within the prescribed time-limit.

119. Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by Yugoslavia were held between 29 April and 3 May 1996.

120. At a public sitting held on 11 July 1996, the Court delivered its Judgment on the preliminary objections (I.C.J. Reports 1996, p. 595), by which it rejected the objections raised by Yugoslavia, finding that, on the basis of Article XI of the Convention on the Prevention and Punishment of the Crime of Genocide, it had jurisdiction; dismissed the additional basis of jurisdiction invoked by Bosnia and Herzegovina and found that the Application was admissible.

121. Judge Oda appended a declaration to the Judgment of the Court; Judges Shi and Vereshchetin appended a joint declaration; Judge ad hoc Lauterpacht also appended a declaration; Judges Shahabuddeen, Weeramantry and Parra-Aranguren appended separate opinions to the Judgment; Judge ad hoc Kreća appended a dissenting opinion.

122. By an Order of 23 July 1996 (I.C.J. Reports 1996, p. 797), the President of the Court, taking into account the views expressed by the Parties, fixed 23 July 1997 as the time-limit for the filing of the Counter-Memorial of Yugoslavia. The Counter-Memorial was filed within the prescribed time-limit. It included counter-claims, by which Yugoslavia requested the Court to adjudge and declare:

"3. Bosnia and Herzegovina is responsible for the acts of genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide:

— because it has incited acts of genocide by the 'Islamic Declaration', and in particular by the position contained in it that 'there can be no peace or coexistence between "Islamic faith" and "non-Islamic" social and political institutions';

— because it has incited acts of genocide by the Novi Vox, paper of the Muslim youth, and in particular by the verses of a 'Patriotic Song' which reads as follows:

'Dear mother, I'm going to plant willows,
We'll hang Serbs from them.
Dear mother, I'm going to sharpen knives,
We'll soon fill pits again';

— because it has incited acts of genocide by the paper Zmaj od Bosne, and in particular by the sentence in an article published in it that 'Each Muslim must name a Serb and take oath to kill him';

— because public calls for the execution of Serbs were broadcast on radio 'Hajat' and thereby acts of genocide were incited;

— because the armed forces of Bosnia and Herzegovina, as well as other organs of Bosnia and Herzegovina have committed acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs in Bosnia and Herzegovina, which have been stated in Chapter Seven of the Counter-Memorial;

— because Bosnia and Herzegovina has not prevented the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs on its territory, which have been stated in Chapter Seven of the Counter-Memorial.

4. Bosnia and Herzegovina has the obligation to punish the persons held responsible for the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

5. Bosnia and Herzegovina is bound to take necessary measures so that the said acts would not be repeated in the future.

6. Bosnia and Herzegovina is bound to eliminate all consequences of the violation of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and provide adequate compensation."

123. By a letter of 28 July 1997 Bosnia and Herzegovina informed the Court that "the Applicant [was] of the opinion that the Counter-Claim submitted by the Respondent . . . [did] not meet the criterion of Article 80, paragraph 1, of the Rules of Court and should therefore not be joined to the original proceedings."

124. At a meeting which the President of the Court held on 22 September 1997 with the Agents of the Parties both Parties accepted that their respective Governments would submit written observations on the question of the admissibility of the Yugoslav Counter-Claims.

125. After Bosnia and Herzegovina and Yugoslavia, in communications dated 9 October and 23 October 1997 respectively, had submitted written observations the Court, by an Order of 17 December 1997 (I.C.J. Reports 1997, p. 243), found that the Counter-Claims submitted by Yugoslavia in its Counter-Memorial were admissible as such and formed part of the proceedings. It further directed Bosnia Herzegovina to submit a Reply and Yugoslavia to submit a Rejoinder, fixing the time-limits for those pleadings at 23 January and 23 July 1998 respectively.

126. Judge ad hoc Kreća appended a declaration to the Order; Judge Koroma and Judge ad hoc Lauterpacht appended separate opinions; and Vice-President Weeramantry appended a dissenting opinion.

127. By an Order of 22 January 1998 (I.C.J. Reports 1998, p. 3), the President of the Court, at the request of Bosnia and Herzegovina and taking into account the views expressed by Yugoslavia, extended the time-limits for the Reply of Bosnia and Herzegovina and the Rejoinder of Yugoslavia to 23 April 1998 and 22 January 1999 respectively. The Reply of Bosnia and Herzegovina was filed within the prescribed time-limit.

128. Following a request from Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, the Court, by an Order of 11 December 1998, extended the time-limit for the filing of Yugoslavia's Rejoinder to 22 February 1999. That Rejoinder was filed within the time-limit thus extended.

6. Gabčíkovo-Nagymaros Project (Hungary/Slovakia)

129. On 23 October 1992 the Ambassador of the Republic of Hungary to the Netherlands filed in the Registry of the International Court of Justice an Application instituting proceedings against the Czech and Slovak Federal Republic in a dispute concerning the projected diversion of the Danube. In that document the Hungarian Government, before detailing its case, invited the Czech and Slovak Federal Republic to accept the jurisdiction of the Court.

130. A copy of the Application was transmitted to the Government of the Czech and Slovak Federal Republic in accordance with Article 38, paragraph 5, of the Rules of Court, which reads as follows:

> "When the Applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case."

131. Following negotiations under the aegis of the European Communities between Hungary and the Czech and Slovak Federal Republic, which dissolved into two separate States on 1 January 1993, the Governments of the Republic of Hungary and of the Slovak Republic notified jointly, on 2 July 1993, to the Registrar of the Court a Special Agreement, signed at Brussels on 7 April 1993, for the submission to the Court of certain issues arising out of differences which had existed between the Republic of Hungary and the Czech and Slovak Federal Republic, regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System and on the construction and operation of the "provisional solution". The Special Agreement records that the Slovak Republic is in this respect the sole successor State of the Czech and Slovak Federal Republic.

132. In Article 2 of the Special Agreement:

"(1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,

(a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;

(b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1.7 on Czechoslovak territory and resulting consequences on water and navigation course);

(c) what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.

(2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph (1) of this Article."

133. By an Order of 14 July 1993 (I.C.J. Reports 1993, p. 319), the Court decided that, as provided in Article 3, paragraph 2, of the Special Agreement and Article 46, paragraph 1, of the Rules of Court, each Party should file a Memorial and a Counter-Memorial, within the same time-limit, and fixed 2 May 1994 and 5 December 1994 as the time-limits for the filing of the Memorial and Counter-Memorial, respectively. The Memorials and Counter-Memorials were filed within the prescribed time-limits.

134. Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

135. By an Order of 20 December 1994 (I.C.J. Reports 1994, p. 151), the President of the Court, taking into account the views of the Parties, fixed 20 June 1995 as the time-limit for the filing of a Reply by each of the Parties. Those Replies were filed within the prescribed time-limit.

136. In June 1995 the Agent of Slovakia asked the Court, by letter, to visit the site of the Gabčíkovo-Nagymaros hydroelectric dam project on the river Danube with regard to the obtaining

of evidence in the above case. The Agent of Hungary thereupon informed the Court that his country would be pleased to co-operate in organizing such a visit.

137. In November 1995, in Budapest and New York, the two Parties then signed a "Protocol of Agreement" on the proposal of a visit by the Court, which, after dates had been fixed with the approval of the Court, was supplemented by Agreed Minutes on 3 February 1997.

138. By an Order of 5 February 1997 (I.C.J. Reports 1997, p. 3) the Court decided to "exercise its functions with regard to the obtaining of evidence by visiting a place or locality to which the case relates" (cf. Art. 66 of the Rules of Court) and to "adopt to that end the arrangements proposed by the Parties". The visit, which was the first in the Court's fifty-year history, took place from 1 to 4 April 1997, between the first and seconds round of oral hearings.

139. The first round of those hearings took place from 3 to 7 March and from 24 to 27 March 1997. A video-film was shown by each of the Parties. The second round took place on 10 and 11 and on 14 and 15 April 1997.

140. At a public sitting held on 25 September 1997 (I.C.J. Reports 1997, p. 7), the Court delivered its Judgment, by which,

(1) Having regard to Article 2, paragraph 1, of the Special Agreement it [found]:

A. that Hungary had not been entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty of 16 September 1977 and related instruments attributed responsibility to it;

B. that Czechoslovakia had been entitled to proceed, in November 1991, to the "provisional solution" as described in the terms of the Special Agreement;

C. that Czechoslovakia had not been entitled to put into operation, from October 1992, this "provisional solution";

D. that the notification, on 19 May 1992, of the termination of the Treaty of 16 September 1977 and related instruments by Hungary had not had the legal effect of terminating them; and,

(2) Having regard to Article 2, paragraph 2, and Article 5 of the Special Agreement, it found:

A. that Slovakia, as successor to Czechoslovakia, had become a party to the Treaty of 16 September 1977 as from 1 January 1993;

B. that Hungary and Slovakia should negotiate in good faith in the light of the prevailing situation, and should take all necessary measures to ensure the achievement of the objectives of the Treaty of 16 September 1977, in accordance with such modalities as they might agree upon;

C. that, unless the Parties otherwise agreed, a joint operational régime should be established in accordance with the Treaty of 16 September 1977;

D. that, unless the Parties otherwise agreed, Hungary should compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia should compensate Hungary for the damage it has sustained on account of the putting into operation of the "provisional solution" by Czechoslovakia and its maintenance in service by Slovakia; and

E. that the settlement of accounts for the construction and operation of the works should be effected in accordance with the relevant provisions of the Treaty of 16 September 1977 and related instruments, taking due account of such measures as would have been taken by the Parties in application of points 2 B and C of the operative paragraph.

141. President Schwebel and Judge Rezek appended declarations to the Judgment. Vice-President Weeramantry, Judges Bedjaoui and Koroma appended separate opinions. Judges Oda, Ranjeva, Herczegh, Fleischhauer, Vereshchetin and Parra-Aranguren, and Judge ad hoc Skubiszewski appended dissenting opinions.

142. On 3 September 1998 Slovakia filed in the Registry of the Court a request for an additional Judgment in the case. Such an additional Judgment was necessary, according to Slovakia, because of the unwillingness of Hungary to implement the Judgment delivered by the Court in that case on 25 September 1997.

143. In its request, Slovakia stated that the Parties had conducted a series of negotiations on the modalities for executing the Court's Judgment and had initialled a draft Framework Agreement, which had been approved by the Government of Slovakia on 10 March 1998. Slovakia contended that on 5 March 1998, however, Hungary had postponed its approval and, upon the accession of its new Government following the May elections, it had proceeded to disavow the draft Framework Agreement and was further delaying the implementation of the Judgment. Slovakia maintained that it wanted the Court to determine the modalities for executing the Judgment.

144. As the basis for its request, Slovakia invoked Article 5 (3) of the Special Agreement signed at Brussels on 7 April 1993 by itself and Hungary with a view to the joint submission of their dispute to the Court.

145. The full text of Article 5 reads as follows:

"(1) The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

(2) Immediately after the transmission of the Judgment the Parties shall enter into negotiations on the modalities for its execution.

(3) If they are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment."

146. Slovakia asked the Court

"to adjudge and declare:

1. That Hungary bears responsibility for the failure of the Parties so far to agree on the modalities for executing the Judgment of 25 September 1997;

2. That in accordance with the Court's Judgment of 25 September 1997, the obligation of the Parties to take all necessary measures to ensure that achievement of the objectives of the Treaty of 16 September 1977 (by which they agreed to build the Gabčíkovo-Nagymaros Project) applies to the whole geographical area and the whole range of relationships covered by that Treaty;

3. That, in order to ensure compliance with the Court's Judgment of 25 September 1997, and given that the 1977 Treaty remains in force and that the Parties must take all necessary measures to ensure the achievement of the objectives of that Treaty:

   (a) With immediate effect, the two Parties shall resume their negotiations in good faith so as to expedite their agreement on the modalities for achieving the objectives of the Treaty of 16 September 1977;

   (b) In particular, Hungary is bound to appoint forthwith its Plenipotentiary as required under Article 3 of the Treaty, and to utilize all mechanisms for joint studies and cooperation established by the Treaty, and generally to conduct its relations with Slovakia on the basis of the Treaty;

   (c) The Parties shall proceed by way of a Framework Agreement leading to a Treaty providing for any necessary amendments to the 1977 Treaty;

   (d) In order to achieve this result, the Parties shall conclude a binding Framework Agreement not later than 1 January 1999;

(e) The Parties shall reach a final agreement on the necessary measures to ensure the achievement of the objectives of the 1977 Treaty in a treaty to enter into force by 30 June 2000;

4. That, should the Parties fail to conclude a Framework Agreement or a final agreement by the dates specified at sub-paragraphs 3 (d) and (e) above:

(a) The 1977 Treaty must be complied with in accordance with its spirit and terms; and

(b) Either party may request the Court to proceed with the allocation of responsibility for any breaches of the Treaty and reparation for such breaches."

147. At a meeting that the President of the Court held with the representatives of the Parties on 7 October 1998, it was decided that Hungary was to file by 7 December 1998 a written statement of its position on the request for an additional Judgment made by Slovakia. Hungary filed its written statement within the time-limit fixed. The Parties subsequently have informed the Court of the resumption of negotiations between them.

7. Land and Maritime Boundary between Cameroon and Nigeria

(Cameroon v. Nigeria)

148. On 29 March 1994 the Republic of Cameroon filed in the Registry of the Court an Application instituting proceedings against the Federal Republic of Nigeria in a dispute concerning the question of sovereignty over the peninsula of Bakassi, and requesting the Court to determine the course of the maritime frontier between the two States in so far as that frontier had not already been established in 1975.

149. As a basis for the jurisdiction of the Court, the Application refers to the declarations made by Cameroon and Nigeria under Article 36, paragraph 2, of the Statute of the Court, by which they accept that jurisdiction as compulsory.

150. In the Application Cameroon refers to "an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities on the Bakassi peninsula", resulting "in great prejudice to the Republic of Cameroon", and requests the Court to adjudge and declare:

"(a) that sovereignty over the peninsula of Bakassi is Cameroonian, by virtue of international law, and that that peninsula is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris);

(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian peninsula of Bakassi;

(e') that the internationally unlawful acts referred to under (a), (b), (c), (d), and (e) above involve the responsibility of the Federal Republic of Nigeria;

(e") that, consequently, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] the precise assessment of the damage caused by the Federal Republic of Nigeria;

(f) in order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions".

151. On 6 June 1994 Cameroon filed in the Registry of the Court an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described as relating essentially "to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad", while also asking the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea. Cameroon requested the Court to adjudge and declare:

"(a) that sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris), and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

(c) that the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

(d) that in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

(e) that the internationally unlawful acts referred to under (a), (b), and (d) above involve the responsibility of the Federal Republic of Nigeria;

(e') that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria;

(f) that in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea".

152. Cameroon further requested the Court to join the two Applications "and to examine the whole in a single case".

153. At a meeting between the President of the Court and the representatives of the Parties held on 14 June 1994, the Agent of Nigeria indicated that his Government had no objection to the Additional Application being treated as an amendment to the initial Application, so that the Court could deal with the whole as one case.

154. Cameroon chose Mr. Kéba Mbaye and Nigeria Mr. Bola A. Ajibola to sit as judges ad hoc.

155. By an Order of 16 June 1994 (I.C.J. Reports 1994, p. 105), the Court, seeing no objection to the suggested procedure, fixed 16 March 1995 as the time-limit for filing the Memorial of Cameroon, and 18 December 1995 as the time-limit for filing the Counter-Memorial of Nigeria. The Memorial was filed within the prescribed time-limit.

156. On 13 December 1995, within the time-limit for the filing of its Counter-Memorial, Nigeria filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the claims of Cameroon.

157. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of that Article.

158. By an Order of 10 January 1996 (I.C.J. Reports 1996, p. 3), the President of the Court, taking into account the views expressed by the Parties at a meeting between the President and the Agents of the Parties held on 10 January 1996, fixed 15 May 1996 as the time-limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections raised by Nigeria. Cameroon filed such a statement within the prescribed time-limit.

159. On 12 February 1996, the Registry of the International Court of Justice received from Cameroon a request for the indication of provisional measures, with reference to "serious armed incidents" which had taken place between Cameroonian and Nigerian forces in the Bakassi Peninsula beginning on 3 February 1996.

160. In its request Cameroon referred to the submissions made in its Application of 29 May 1994, supplemented by an Additional Application of 6 June of that year, as also summed

up in its Memorial of 16 March 1995, and requested the Court to indicate the following provisional measures:

"(1) the armed forces of the Parties shall withdraw to the position they were occupying before the Nigerian armed attack of 3 February 1996;

(2) the Parties shall abstain from all military activity along the entire boundary until the judgment of the Court is given;

(3) the Parties shall abstain from any act or action which might hamper the gathering of evidence in the present case".

161. Public sittings to hear the oral observations of the Parties on the request for the indication of provisional measures were held between 5 and 8 March 1996.

162. At a public sitting, held on 15 March 1996, the President of the Court read the Order on the request for provisional measures made by Cameroon (I.C.J. Reports 1996, p. 13), by which the Court indicated that "both Parties should ensure that no action of any kind, and particularly no action by their armed forces, is taken which might prejudice the rights of the other in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before it;" that they "should observe the agreement reached between the Ministers for Foreign Affairs in Kara, Togo, on 17 February 1996, for the cessation of all hostilities in the Bakassi Peninsula;" that they "should ensure that the presence of any armed forces in the Bakassi Peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996;" that they "should take all necessary steps to conserve evidence relevant to the present case within the disputed area;" and that they "should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi Peninsula".

163. Judges Oda, Shahabuddeen, Ranjeva and Koroma appended declarations to the Order of the Court; Judges Weeramantry, Shi and Vereshchetin appended a joint declaration; Judge ad hoc Mbaye also appended a declaration. Judge ad hoc Ajibola appended a separate opinion to the Order.

164. Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by Nigeria were held from 2 to 11 March 1998.

165. At a public sitting held on 11 June 1998, the Court delivered its Judgment on the preliminary objections (I.C.J. Reports 1998, p. 275), by which it rejected seven of Nigeria's eight preliminary objections; declared that the eighth preliminary objection did not have, in the circumstances of the case, an exclusively preliminary character; and found that, on the basis of Article 36, paragraph 2, of the Statute, it had jurisdiction to adjudicate upon the dispute and that the Application filed by Cameroon on 29 March 1994, as amended by the Additional Application of 6 June 1994, was admissible.

166. Judges Oda, Vereshchetin, Higgins, Parra-Aranguren and Kooijmans appended separate opinions to the Judgment; Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola appended dissenting opinions.

167. By an Order of 30 June 1998 (I.C.J. Reports 1998, p. 420), the Court, having been informed of the views of the Parties, fixed 31 March 1999 as the time-limit for the filing of the Counter-Memorial of Nigeria.

168. On 28 October Nigeria filed a request for an interpretation of the Court's Judgment on preliminary objections of 11 June 1998. (Since a request for interpretation of a Judgment of the Court forms a separate case, see below, p. 37 under 11).

169. On 23 February 1999 Nigeria made a request for extension of the time-limit for the deposit of its Counter-Memorial, because it would "not be in a position to complete its Counter-Memorial until it [knew] the outcome of its request for interpretation as it [did] not at present know the scope of the case it [had] to answer on State Responsibility". By a letter of 27 February 1999 the Agent of Cameroon informed the Court that his Government "[was] resolutely

opposed to the granting of Nigeria's request", as its dispute with Nigeria "call[ed] for a rapid decision".

170. By an Order of 3 March 1999 (I.C.J. Reports 1999, p. 24), the Court — considering that although a request for interpretation "cannot in itself suffice to justify the extension of a time-limit, it should nevertheless, given the circumstances of the case, grant Nigeria's request" — extended to 31 May 1999 the time-limit for the filing of Nigeria's Counter-Memorial. The Counter-Memorial was filed within the time-limit thus extended.

171. The Counter-Memorial included counter-claims, specified in Part VI. At the end of each section dealing with a particular sector of the frontier, the Nigerian Government asked the Court to declare that the incidents referred to

> "engage the international responsibility of Cameroon, with compensation in the form of damages, if not agreed between the parties, then to be awarded by the Court in a subsequent phase of the case";

172. The seventh and final submission set out by the Nigerian Government in its Counter-Memorial reads as follows:

> "as to Nigeria's counter-claims as specified in Part VI of this Counter-Memorial, [the Court is asked to] adjudge and declare that Cameroon bears responsibility to Nigeria in respect of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment".

173. In an Order of 30 June 1999 the Court found that Nigeria's counter-claims were admissible as such and formed part of the proceedings; it further decided that Cameroon should submit a Reply and Nigeria a Rejoinder, relating to the claims of both Parties, and fixed the time-limits for those pleadings at 4 April 2000 and 4 January 2001 respectively.

174. On 30 June 1999 the Republic of Equatorial Guinea filed a request for permission to intervene in the case.

175. In its request, Equatorial Guinea stated that the purpose of its intervention would be "to protect [its] legal rights in the Gulf of Guinea by all legal means" and "to inform the Court of Equatorial Guinea's legal rights and interests so that these may remain unaffected as the Court proceeds to address the question of the maritime boundary between Cameroon and Nigeria". Equatorial Guinea made it clear that it did not seek to intervene in those aspects of the proceedings that relate to the land boundary between Cameroon and Nigeria, nor to become a party to the case. It further stated that, although it would be open to the three countries to request the Court not only to determine the Cameroon-Nigeria maritime boundary but also to determine Equatorial Guinea's maritime boundary with these two States, Equatorial Guinea had made no such request and wished to continue to seek to determine its maritime boundary with its neighbours by negotiation.

176. The Court fixed 16 August 1999 as the time-limit for the filing of written observations on Equatorial Guinea's request by Cameroon and Nigeria.

8. Fisheries Jurisdiction (Spain v. Canada)

177. On 28 March 1995 the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the implementing regulations of that Act, as well as to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the Estai, sailing under the Spanish flag.

178. The Application indicated, inter alia, that by the amended Act "an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the NAFO Regulatory Area [NAFO — Northwest Atlantic Fisheries Organization], that is, on the high seas, outside Canada's exclusive economic zone"; that the Act "expressly permits (Article 8) the use of

force against foreign fishing boats in the zones that Article 2.1 unambiguously terms the 'high seas'"; that the implementing regulations of 25 May 1994 provided, in particular, for "the use of force by fishery protection vessels against the foreign fishing boats covered by those rules ... which infringe their mandates in the zone of the high seas within the scope of those regulations"; and that the implementing regulations of 3 March 1995 "expressly permit [...] such conduct as regards Spanish and Portuguese ships on the high seas".

179. The Application alleged the violation of various principles and norms of international law and stated that there was a dispute between the Kingdom of Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious infringement of the sovereign rights of Spain.

180. As a basis of the Court's jurisdiction, the Applicant referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court.

181. In that regard, the Application specified that:

> "The exclusion of the jurisdiction of the Court in relation to disputes which may arise from management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures (Declaration of Canada, para. 2 (d), introduced as recently as 10 May 1994, two days prior to the amendment of the Coastal Fisheries Protection Act), does not even partially affect the present dispute. Indeed, the Application of the Kingdom of Spain does not refer exactly to the disputes concerning those measures, but rather to their origin, to the Canadian legislation which constitutes their frame of reference. The Application of Spain directly attacks the title asserted to justify the Canadian measures and their actions to enforce them, a piece of legislation which, going a great deal further than the mere management and conservation of fishery resources, is in itself an internationally wrongful act of Canada, as it is contrary to the fundamental principles and norms of international law; a piece of legislation which for that reason does not fall exclusively within the jurisdiction of Canada either, according to its own Declaration (paragraph 2 (c) thereof). Moreover, only as from 3 March 1995 has an attempt been made to extend that legislation, in a discriminatory manner, to ships flying the flags of Spain and Portugal, which has led to the serious offences against international law set forth above."

182. While expressly reserving the right to modify and extend the terms of the Application, as well as the grounds invoked, and the right to request the appropriate provisional measures, the Kingdom of Spain requested:

> "(A) that the Court declare that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;
>
> (B) that the Court adjudge and declare that Canada is bound to refrain from any repetition of the complained of acts, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which must cover all the damages and injuries occasioned; and
>
> (C) that, consequently, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship Estai flying the flag of Spain and the measures of coercion and the exercise of jurisdiction over that ship and over its captain constitute a concrete violation of the aforementioned principles and norms of international law;"

183. By a letter dated 21 April 1995, the Ambassador of Canada to the Netherlands informed the Court that, in the view of his Government, the Court manifestly lacked jurisdiction to deal with the Application filed by Spain by reason of paragraph 2 (d) of the Declaration, dated 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court. Paragraph 2 (d) provides:

> "(2) I declare that the Government of Canada accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after the present declaration with regard to situations or facts subsequent to this declaration, other than:
>
> . . . . . .
>
> (d) disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures."

184. Taking into account an agreement concerning the procedure reached between the Parties at a meeting with the President of the Court, held on 27 April 1995, the President, by an Order of 2 May 1995, decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute and fixed 29 September 1995 as the time-limit for

the filing of the Memorial of the Kingdom of Spain and 29 February 1996 for the filing of the Counter-Memorial of Canada. The Memorial and Counter-Memorial were filed within the prescribed time-limits.

185. Spain chose Mr. Santiago Torres-Bernárdez and Canada Mr. Marc Lalonde to sit as judges ad hoc.

186. The Spanish Government subsequently expressed its wish to be authorized to file a Reply; the Canadian Government opposed this. By an Order of 8 May 1996, (I.C.J. Reports 1996, p. 58) the Court, considering that it was "sufficiently informed, at this stage, of the contentions of fact and law on which the Parties rely with respect to its jurisdiction in the case and whereas the presentation by them, of other written pleadings on that question therefore does not appear necessary", decided by fifteen votes to two, not to authorize the filing of a Reply by the Applicant and a Rejoinder by the Respondent on the question of jurisdiction.

187. Judge Vereshchetin and Judge ad hoc Torres Bernárdez voted against; the latter appended a dissenting opinion to the Order.

188. Public sittings to hear the oral arguments of the Parties on the question of the jurisdiction of the Court were held between 9 and 17 June 1998.

189. At a public sitting held on 4 December 1998, the Court delivered its Judgment on jurisdiction (I.C.J. Reports 1998, p. 432), the operative paragraph of which reads as follows:

"For these reasons,

THE COURT,

By twelve votes to five,

Finds that it has no jurisdiction to adjudicate upon the dispute brought before it by the Application filed by the Kingdom of Spain on 28 March 1995.

IN FAVOUR: President Schwebel; Judges Oda, Guillaume, Herczegh, Shi, Fleischhauer, Koroma, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Lalonde;

AGAINST: Vice-President Weeramantry; Judges Bedjaoui, Ranjeva, Vereshchetin; Judge ad hoc Torres Bernárdez."

190. President Schwebel and Judges Oda, Koroma and Kooijmans appended separate opinions to the Judgment; Vice-President Weeramantry, Judges Bedjaoui, Ranjeva and Vereshchetin, and Judge ad hoc Torres Bernárdez appended dissenting opinions.

9. Kasikili/Sedudu Island (Botswana/Namibia)

191. On 29 May 1996 the Government of the Republic of Botswana and the Government of the Republic of Namibia notified jointly to the Registrar of the Court a Special Agreement between the two States signed at Gaborone on 15 February 1996 and which came into force on 15 May 1996, for the submission to the Court of the dispute existing between them concerning the boundary around Kasikili/Sedudu Island and the legal status of that island.

192. The Special Agreement refers to a Treaty between Great Britain and Germany respecting the spheres of influence of the two countries, signed on 1 July 1890, and to the appointment, on 24 May 1992, of a Joint Team of Technical Experts "to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island" on the basis of that Treaty and of the applicable principles of international law. Unable to reach a conclusion on the question the Joint Team of Technical Experts recommended "recourse to the peaceful settlement of the dispute on the basis of the applicable rules and principles of international law". At the Summit Meeting held in Harare, Zimbabwe, on 15 February 1995, President Masire of Botswana and President Nujoma of Namibia agreed "to submit the dispute to the International Court of Justice for a final and binding determination".

193. Under the terms of the Special Agreement, the Parties ask the Court to

> "determine, on the basis of the Anglo-Germany Treaty of 1st July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island."

194. By an Order of 24 June 1996 (I.C.J. Reports 1996, p. 63), the Court fixed 28 February and 28 November 1997 respectively as the time-limits for the filing by each of the Parties of a Memorial and a Counter-Memorial. A Memorial and a Counter-Memorial were filed by each of the Parties within the prescribed time-limits.

195. In a joint letter dated 16 February 1998 the Parties requested further written pleadings pursuant to Article II, paragraph 2 (c) of the Special Agreement, which provides, in addition to the Memorials and Counter-Memorials, for "such other pleadings as may be approved by the Court at the request of either of the Parties, or as may be directed by the Court".

196. By an Order of 27 February 1998 (I.C.J. Reports 1998, p. 6), the Court, taking into account the agreement between the Parties, fixed 27 November 1998 as the time-limit for the filing of a Reply by each of the Parties. These Replies were filed within the prescribed time-limit.

197. Public sittings to hear the oral arguments of the Parties were held from 15 February to 5 March 1999.

198. At the time of preparation of this Report, the Court was deliberating on its Judgment.

10. Vienna Convention on Consular Relations (Paraguay v. United States of America)

199. On 3 April 1998 the Republic of Paraguay filed in the Registry of the Court an Application instituting proceedings against the United States of America in a dispute concerning

alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Paraguay based the jurisdiction of the Court on Article 36, paragraph 1 of the Court's Statute and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes which accompanies the Vienna Convention on Consular Relations, and which provides that "disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice".

200. In the Application it was stated that in 1992 the authorities of the Commonwealth of Virginia had arrested a Paraguayan national, Mr. Angel Francisco Breard; that he had been charged, tried, convicted of culpable homicide and sentenced to death by a Virginia court (the Circuit Court of Arlington County) in 1993, without having been informed, as is required under Article 36, subparagraph 1 (b), of the Vienna Convention, of his rights under that provision; it was specified that among these rights were the right to request that the relevant consular office of the State of which he was a national be advised of his arrest and detention, and the right to communicate with that office; it was further alleged that the authorities of the Commonwealth of Virginia also had not advised the Paraguayan consular officers of Mr. Breard's detention, and that those officers had only been able to render assistance to him from 1996, when the Paraguayan Government had learnt by its own means that Mr. Breard had been imprisoned in the United States.

201. Paraguay requested the Court to adjudge and declare as follows:

"(1) that the United States, in arresting, detaining, trying, convicting, and sentencing Angel Francisco Breard, as described in the preceding statement of facts, violated its international legal obligations to Paraguay, in its own right and in the exercise of its right of diplomatic protection of its national, as provided by Articles 5 and 36 of the Vienna Convention;

(2) that Paraguay is therefore entitled to restitutio in integrum;

(3) that the United States is under an international legal obligation not to apply to the doctrine of 'procedural default', or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and

(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against Angel Francisco Breard or any other Paraguayan national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) any criminal liability imposed on Angel Francisco Breard in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) the United States should restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place; and

(3) the United States should provide Paraguay a guarantee of the non-repetition of the illegal acts."

202. On the same day, 3 April 1998, Paraguay "in view of the extreme gravity and immediacy of the threat that the authorities . . . will execute a Paraguayan citizen", submitted an urgent request for the indication of provisional measures, asking that, pending final judgment in the case, the Court indicate:

"(a) That the Government of the United States take the measures necessary to ensure that Mr. Breard not be executed pending the disposition of this case;

(b) That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraph (a) immediately above and the results of those actions; and

(c) That the Government of the United States ensure that no action is taken that might prejudice the rights of the Republic of Paraguay with respect to any decision this Court may render on the merits of the case."

203. By identical letters dated 3 April 1998, the Vice-President of the Court, Acting President, addressed both Parties in the following terms:

"Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of both Parties to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects";

204. At a meeting held the same day with the representatives of both Parties, he advised them that the Court would hold public hearings on 7 April 1998 at 10 a.m., in order to afford the Parties the opportunity of presenting their observations on the request for provisional measures;

205. After those hearings had been held, the Vice-President of the Court, Acting President, at a public sitting of 9 April 1998, read the Order on the request for provisional measures made by Paraguay (I.C.J. Reports 1998, p. 248), by which the Court unanimously indicated that the United States had to take all measures at its disposal to ensure that Angel Francisco Breard would not be executed pending the final decision in the proceedings, and had to inform the Court of all the measures which it had taken in implementation of that Order; and decided, that, until the Court had given its final decision, it should remain seised of the matters which formed the subject-matter of that Order.

206. President Schwebel and Judges Oda and Koroma appended declarations to the Order of the Court.

207. By an Order of the same day, 9 April 1998 (I.C.J. Reports 1998, p. 266), the Vice-President of the Court, Acting President, taking into account the Court's Order on provisional measures, in which it is stated that "it is appropriate that the Court, with the co-operation of the Parties, ensure that any decision on the merits be reached with all possible expedition"and a subsequent agreement between the Parties, fixed 9 June 1998 as the time-limit for the Memorial of Paraguay and 9 September 1998 for the Counter-Memorial of the United States.

208. In response to a request from Paraguay made in the light of the execution of Mr. Breard, and taking into account an agreement on extension of time-limits reached by the Parties, the Vice-President, Acting President, by an Order of 8 June 1998, extended the above-mentioned time-limits to 9 October 1998 and 9 April 1999 respectively. Paraguay's Memorial was filed within the time-limit thus extended.

209. By a letter of 2 November 1998 Paraguay informed the Court that it wished to discontinue the proceedings with prejudice and requested that the case be removed from the List.

210. After the United States had informed the Court that it concurred in Paraguay's request, the Court, in an Order of 10 November 1998 (I.C.J. Reports 1998, p. 426), placed the discontinuance by Paraguay on record and ordered the removal of the case from the List.

11. Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon),

211. On 28 October 1998, the Federal Republic of Nigeria filed in the Registry of the Court an Application instituting proceedings against the Republic of Cameroon dated 21 October 1998, whereby it requested the Court to interpret the Judgment delivered by the Court on 11 June 1998 in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), (Preliminary Objections).

212. Since a request for the interpretation of a judgment is made either by an application or by the notification of a special agreement, it gives rise to a new case. Nigeria's request, which does not fall into the category of incidental proceedings, does not therefore form part of the current proceedings in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria) (see above, p. 28 under 7).

213. In its request, Nigeria set out that "One aspect of the case before the Court is the alleged international responsibility borne by Nigeria for certain incidents said to have occurred at various places in Bakassi and Lake Chad and along the length of the frontier between those two regions". Nigeria contended that Cameroon had made "allegations involving a number of such incidents in

its Application of 29 March 1994, its Additional Application of 6 June 1994, its Observations of 30 April 1996 on Nigeria's Preliminary Objections, and during the oral hearings held from 2-11 March 1998", and that Cameroon had also said that it "would be able to provide information as to other incidents on some unspecified future occasion". In the view of Nigeria, the Court's Judgment "[did] not specify which of these alleged incidents [were] to be considered as part of the merits of the case" and accordingly, "the meaning and scope of the Judgment require[d] interpretation".

214. The full text of Nigeria's submissions read as follows:

"Nigeria requests the Court to adjudge and declare that the Court's Judgment of 11 June 1998 is to be interpreted as meaning that:

so far as concerns the international responsibility which Nigeria is said to bear for certain alleged incidents:

(a) the dispute before the Court does not include any alleged incidents other than (at most) those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994;

(b) Cameroon's freedom to present additional facts and legal considerations relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994; and

(c) the question whether facts alleged by Cameroon are established or not relates (at most) only to those specified in Cameroon's Application of 29 March 1994 and Additional Application of 6 June 1994."

215. The Senior Judge, Acting President, fixed 3 December 1998 as the time-limit for Cameroon to submit its written observations on Nigeria's request for interpretation. Those written observations were filed within the time-limit fixed. In the light of the dossier thus submitted, the Court did not deem it necessary to invite the Parties to furnish further written or oral explanations.

216. Nigeria chose Mr. Bola Ajibola and Cameroon Mr. Kéba Mbaye to sit as judge ad hoc in the case.

217. At a public sitting held on 25 March 1999, the Court delivered its Judgment on the request for interpretation, the operative paragraph of which reads as follows:

"For these reasons,

THE COURT,

(1) by thirteen votes to three,

Declares inadmissible the request for interpretation of the Judgment of 11 June 1998 in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, presented by Nigeria on 28 October 1998;

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola.

(2) unanimously,

Rejects Cameroon's request that Nigeria bear the additional costs caused to Cameroon by the above-mentioned request for interpretation."

218. Vice-President Weeramantry, Judge Koroma, and Judge ad hoc Ajibola appended dissenting opinions to the Judgment.

12. Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)

219. On 2 November 1998, the Republic of Indonesia, and Malaysia jointly notified to the Court a Special Agreement between the two States, signed at Kuala Lumpur on 31 May 1997 and having entered into force on 14 May 1998, in which they request the Court

"to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia";

220. By an order of 10 November 1998 I.C.J. Reports 1998, p. 429), the Court, taking into account the provisions of the Special Agreement on the written pleadings, fixed 2 November 1999

and 2 March 2000 respectively as the time-limits for the filing by each of the Parties of a Memorial and a Counter-Memorial.

13. Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)

221. On 28 December 1998 the Republic of Guinea instituted proceedings against the Democratic Republic of the Congo by an "Application with a view to diplomatic protection", in which it requested the Court to "condemn the Democratic Republic of the Congo for the grave breaches of international law perpetrated upon the person of a Guinean national", Mr. Ahmadou Sadio Diallo.

222. According to Guinea, Mr. Ahmadou Sadio Diallo, a businessman who had been a resident of the Democratic Republic of the Congo for 32 years, was "unlawfully imprisoned by the authorities of that State" during two and a half months, "divested from his important investments, companies, bank accounts, movable and immovable properties, then expelled" on 2 February 1996 as a result of his attempts to recover sums owed to him by the Democratic Republic of the Congo (especially by Gécamines, a State enterprise with a monopoly with regard to mining) and by oil companies operating in that country (Zaïre Shell, Zaïre Mobil and Zaïre Fina) by virtue of contracts concluded with businesses owned by him, Africom-Zaïre and Africontainers-Zaïre.

223. As a basis of the Court's jurisdiction, Guinea invoked its own declaration of acceptance of the compulsory jurisdiction of the Court, of 11 November 1998 and the declaration of the Democratic Republic of the Congo of 8 February 1989.

14. LaGrand (Germany v. United States of America)

224. On 2 March 1999 the Federal Republic of Germany filed in the Registry of the Court an Application instituting proceedings against the United States of America for "violations of the Vienna Convention on Consular Relations [of 24 April 1963]" allegedly committed by the United States.

225. In the Application Germany based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention on Consular Relations ("the Optional Protocol").

226. In the Application, Germany stated that in 1982 the authorities of the State of Arizona detained two German nationals, Karl and Walter LaGrand; that these individuals were tried and sentenced to death without having been informed, as was required under Article 36, subparagraph 1 (b), of the Vienna Convention, of their rights under that provision (which requires the competent authorities of a State party to advise, "without delay", a national of another State party whom such authorities arrest or detain of the national's right to consular assistance guaranteed by Article 36). Germany also alleged that the failure to provide the required notification precluded it from protecting its nationals' interests in the United States provided for by Articles 5 and 36 of the Vienna Convention at both the trial and the appeal level in the United States courts.

227. The Federal Republic of Germany asked the Court to adjudge and declare:

> "(1) that the United States, in arresting, detaining, trying, convicting and sentencing Karl and Walter LaGrand, as described in the preceding statement of facts, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, as provided by Articles 5 and 36 of the Vienna Convention,
>
> (2) that Germany is therefore entitled to reparation,

(3) that the United States is under an international legal obligation not to apply the doctrine of 'procedural default' or any other doctrine of national law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention;

and

(4) that the United States is under an international obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against any other German national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) the United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand on 24 February 1999;

(3) the United States should restore the status quo ante in the case of Walter LaGrand, that is re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of that German national in violation of the United States' international legal obligation took place; and

(4) the United States should provide Germany a guarantee of the non-repetition of the illegal acts";

228. On 2 March 1999 Germany also submitted an urgent request for the indication of provisional measures.

229. In its request, Germany referred to the basis of jurisdiction of the Court invoked in its Application, and to the facts set out and the submissions made therein; it affirmed in particular that the United States had violated its obligations under the Vienna Convention.

230. Germany further recalled that Karl LaGrand had been executed on 24 February 1999, despite all appeals for clemency and numerous diplomatic interventions by the German Government at the highest level; that the date of execution of Walter LaGrand in the State of Arizona had been

set for 3 March 1999; and that the request for the urgent indication of provisional measures was submitted in the interest of this latter individual. Germany emphasized that:

> "The importance and sanctity of an individual human life are well established in international law. As recognized by Article 6 of the International Covenant on Civil and Political Rights, every human being has the inherent right to life and this right shall be protected by law".

It added the following:

> "Under the grave and exceptional circumstances of this case, and given the paramount interest of Germany in the life and liberty of its nationals, provisional measures are urgently needed to protect the life of Germany's national Walter LaGrand and the ability of this Court to order the relief to which Germany is entitled in the case of Walter LaGrand, namely restoration of the status quo ante. Without the provisional measures requested, the United States will execute Walter LaGrand — as it did execute his brother Karl — before this Court can consider the merits of Germany's claims, and Germany will be forever deprived of the opportunity to have the status quo ante restored in the event of a judgment in its favour".

231. Germany asked the Court to indicate that:

> "The United States should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of that Order";

it asked the Court moreover to consider its request as a matter of the greatest urgency "in view of the extreme gravity and immediacy of the threat of execution of a German citizen".

232. By a letter dated also 2 March 1999, the Vice-President of the Court addressed the Government of the United States in the following terms:

> "Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of [the] Government [of the United States] to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects";

233. At a public sitting held on 3 March 1999, the Court rendered its Order on the request for the indication of provisional measures (I.C.J. Reports 1999, p. 9), the operative paragraph of which reads as follows:

> "For these reasons,

THE COURT

Unanimously,

I. Indicates the following provisional measures:

(a) The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;

(b) The Government of the United States of America should transmit this Order to the Governor of the State of Arizona.

II. Decides, that, until the Court has given its final decision, it shall remain seised of the matters which form the subject-matter of this Order."

234. Judge Oda appended a declaration to the Order; President Schwebel a separate opinion.

235. By an Order of 5 March 1999 (I.C.J. Reports 1999, p. 28), the Court, taking into account the views of the Parties, fixed 16 September 1999 and 27 March 2000 as the time-limits for the filing of the Memorial of Germany and the Counter-Memorial of the United States respectively.

15.-24. Legality of Use of Force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. Spain) (Yugoslavia v. United Kingdom) and (Yugoslavia v. United States of America)

236. On 29 April 1999 the Federal Republic of Yugoslavia filed in the Registry of the Court Applications instituting proceedings against Belgium, Canada, France, Germany, Italy, Netherlands, Portugal, Spain, United Kingdom and United States of America "for violation of the obligation not to use force".

237. In those Applications Yugoslavia defined the subject of the dispute as follows:

"The subject-matter of the dispute are acts of the [Respondent State concerned] by which it has violated its international obligation banning the use of force against another State, the obligation not to intervene in the internal affairs of another State, the obligation not to violate the sovereignty of another State, the obligation to protect the civilian population and civilian objects in wartime, the obligation to protect the environment, the obligation relating to free navigation on international rivers, the obligation regarding fundamental human rights and freedoms, the obligation not to use prohibited weapons, the obligation not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group";

238. As a basis for the jurisdiction of the Court, Yugoslavia referred, in the cases against Belgium, Canada, Netherlands, Portugal, Spain and the United Kingdom, to Article 36, paragraph 2, of the Statute of the Court and to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 (hereinafter called the "Genocide Convention"); and, in the cases against France, Germany, Italy and the United States, to Article IX of the Genocide Convention and to Article 38, paragraph 5, of the Rules of Court.

239. In each of the cases Yugoslavia requested the International Court of Justice to adjudge and declare that:

"— by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;

— by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called 'Kosovo Liberation Army', the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

— by taking part in attacks on civilian targets, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

— by taking part in destroying or damaging monasteries, monuments of culture, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

— by taking part in the use of cluster bombs, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

— by taking part in the bombing of oil refineries and chemical plants, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

— by taking part in the use of weapons containing depleted uranium, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

— by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

— by taking part in destroying bridges on international rivers, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

— by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the [Respondent State concerned] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

— the [Respondent State concerned] is responsible for the violation of the above international obligations;

— the [Respondent State concerned] is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

— the [Respondent State concerned] is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons";

240. On the same day, 29 April 1999, Yugoslavia also submitted, in each of the cases, a request for the indication of provisional measures. It requested the Court to indicate the following measure:

"The [Respondent State concerned] shall cease immediately its acts of use of force and shall refrain from any act of threat or use of force against the Federal Republic of Yugoslavia".

241. Yugoslavia chose Mr. Milenko Kreća, Belgium Mr. Patrick Duinslaeger, Canada Mr. Marc Lalonde, Italy Mr. Giorgio Gaja, and Spain Mr. Santiago Torres Bernárdez to sit as judges ad hoc in the case.

242. Hearings on the requests for the indication of provisional measures were held between 10 and 12 May 1999.

243. At a public sitting held on 2 June 1999, the Vice-President of the Court, Acting President, read the Orders, by which, in the cases (Yugoslavia v. Belgium), (Yugoslavia v. Canada), (Yugoslavia v. France), (Yugoslavia v. Germany), (Yugoslavia v. Italy), (Yugoslavia v. Netherlands), (Yugoslavia v. Portugal) and (Yugoslavia v. the United Kingdom), the Court — having found that it lacked prima facie jurisdiction to entertain Yugoslavia's Application — rejected the requests for the indication of provisional measures submitted by that State and reserved the subsequent procedure for further decision. In the cases of (Yugoslavia v. Spain) and (Yugoslavia v. the United States), the Court — having found that it manifestly lacked jurisdiction to entertain Yugoslavia's Application; that it could not therefore indicate any provisional measure whatsoever in order to protect the rights invoked therein; and that, within a system of consensual jurisdiction, to maintain on the General List a case upon which it appeared certain that the Court would not be able to adjudicate on the merits would most assuredly not contribute to the sound administration of justice — rejected Yugoslavia's requests for the indication of provisional measures and ordered that those cases be removed from the List.

244. In each of the cases (Yugoslavia v. Belgium), (Yugoslavia v. Canada), (Yugoslavia v. Netherlands) and (Yugoslavia v. Portugal), Judge Koroma appended a declaration to the Order of the Court; Judges Oda, Higgins, Parra-Aranguren and Kooijmans appended separate opinions; and Vice-President Weeramantry, Acting President, Judges Shi and Vereshchetin and Judge ad hoc Kreća appended dissenting opinions.

245. In each of the cases (Yugoslavia v. France), (Yugoslavia v. Germany) and (Yugoslavia v. Italy), Vice-President Weeramantry, Acting President and Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda and Parra-Aranguren appended separate opinions; and Judge ad hoc Kreća appended a dissenting opinion.

246. In the case (Yugoslavia v. Spain), Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; and Judges Oda, Higgins, Parra-Aranguren and Kooijmans and Judge ad hoc Kreća appended separate opinions.

247. In the case (Yugoslavia v. United Kingdom), Vice-President Weeramantry, Acting President, and Judges Shi, Koroma and Vereshchetin appended declarations to the Order of the Court; Judges Oda, Higgins, Parra-Aranguren and Kooijmans appended separate opinions; and Judge ad hoc Kreća appended a dissenting opinion.

248. By Orders of 30 June 1999 the Court, having ascertained the views of the Parties, fixed the time-limits for the filing of the written pleadings in each of the eight cases maintained on the List: 5 January 2000 for the Memorial of Yugoslavia and 5 July 2000 for the Counter-Memorial of the Respondent State concerned.

25.-27. Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Burundi) (Democratic Republic of the Congo v. Uganda) and (Democratic Republic of the Congo v. Rwanda)

249. On 23 June 1999 the Democratic Republic of the Congo (DRC) filed in the Registry of the Court Applications instituting proceedings against Burundi, Uganda and Rwanda respectively for "acts of armed aggression perpetrated in flagrant violation of the United Nations Charter and of the Charter of the OAU".

250. In its Applications, the DRC contended that "such armed aggression . . . ha[d] involved inter alia violation of the sovereignty and territorial integrity of the [DRC], violations of international humanitarian law and massive human rights violations". By instituting proceedings, the DRC was seeking "to secure the cessation of the acts of aggression directed against it, which

constitute a serious threat to peace and security in central Africa in general and in the Great Lakes region in particular"; it was also seeking reparation for acts of intentional destruction and looting, and the restitution of national property and resources appropriated for the benefit of the respective Respondent States.

251. In the cases (Democratic Republic of the Congo v. Burundi) and (Democratic Republic of the Congo v. Rwanda), the DRC invoked as bases for the jurisdiction of the Court Article 36, paragraph 1, of the Statute of the Court, the New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971, and also Article 38, paragraph 5, of the Rules of Court. This Article contemplates the situation where a State files an application against another State which has not accepted the jurisdiction of the Court. Article 36, paragraph 1, of the Statute, provides that "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force".

252. In the case (Democratic Republic of the Congo v. Uganda), the DRC invoked as a basis for the jurisdiction of the Court the declarations by which both States have accepted the compulsory jurisdiction of the Court in relation to any other State accepting the same obligation (Article 36, paragraph 2, of the Statute of the Court).

253. The Democratic Republic of the Congo requested the Court to:

"Adjudge and declare that:

(a) [The Respondent State concerned] is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter;

(b) further, [the Respondent State concerned] is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the

elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;

(c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, [the Respondent State concerned] has rendered itself responsible for very heavy losses of life in the city of Kinshasa (5 million inhabitants) and the surrounding area;

(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, [the Respondent State concerned] has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

1. all armed forces [of the Respondent State concerned] participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;

2. [the Respondent State concerned] shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons

3. the Democratic Republic of the Congo is entitled to compensation from [the Respondent State concerned] in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to [the Respondent State concerned], in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed."

28. Proceedings instituted by Croatia against Yugoslavia

254. On 2 July 1999 the Republic of Croatia filed in the Registry of the Court an Application instituting proceedings against the Federal Republic of Yugoslavia "for violations of the Convention on the Prevention and Punishment of the Crime of Genocide", alleged to have been committed between 1991 and 1995.

255. In its Application, Croatia contended that "by directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of . . . Croatia, in the Knin region, eastern and western Slovenia, and Dalmatia, [Yugoslavia] is liable [for] the 'ethnic cleansing' of Croatian citizens from these areas . . . and is required to provide reparation

for the resulting damage". Croatia went on to state that "in addition, by directing, encouraging, and urging Croatian citizens of Serb ethnicity in the Knin region to evacuate the area in 1995, as . . . Croatia reasserted its legitimate governmental authority . . . [Yugoslavia] engaged in conduct amounting to a second round of 'ethnic cleansing'".

256. The Application referred to Article 36, paragraph 1 of the Court's Statute and to Article IX of the Genocide Convention as the bases for the jurisdiction of the Court.

257. Croatia requested the Court to adjudge and declare:

"(a) That the Federal Republic of Yugoslavia has breached its legal obligations toward the People and Republic of Croatia under Articles I, II(a), II(b), II(c), II(d), III(a), III(b), III(c), III(d), III(e), IV and V of the Genocide Convention;

(b) That the Federal Republic of Yugoslavia has an obligation to pay to the Republic of Croatia, in its own right and as parens patriae for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. The Republic of Croatia reserves the right to introduce to the Court at a future date a precise evaluation of the damages caused by the Federal Republic of Yugoslavia."

B. Request for Advisory Opinion

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights

258. On 5 August 1998, the United Nations Economic and Social Council adopted decision 1998/297, the text of which reads as follows:

"The Economic and Social Council,

Having considered the note by the Secretary-General on the privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers[1],

Considering that a difference has arisen between the United Nations and the Government of Malaysia, within the meaning of Section 30 of the Convention on the Privileges and Immunities of the United Nations, with respect to the immunity from legal process of Dato' Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

Recalling General Assembly resolution 89 (I) of 11 December 1946,

1. Requests on a priority basis, pursuant to Article 96, paragraph 2, of the Charter of the United Nations and in accordance with General Assembly resolution 89 (I), an advisory opinion from the International Court of Justice on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, taking into account the circumstances set out in paragraphs 1 to 15 of the note by the Secretary-General[1], and on the legal obligations of Malaysia in this case;

2. Calls upon the Government of Malaysia to ensure that all judgements and proceedings in this matter in the Malaysian courts are stayed pending receipt of the advisory opinion of the International Court of Justice, which shall be accepted as decisive by the parties.

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[1]E/1998/94."

259. By a letter dated 7 August 1998, filed in the Registry of the Court on 10 August 1998, the Secretary-General officially communicated the Council's decision to the Court.

260. By an Order of the same date, 10 August 1998 (I.C.J. Reports 1998, p. 423), the Senior Judge, Acting President, bearing in mind that the request was made "on a priority basis", fixed 7 October 1998 as the time-limit within which written statements on the question might be submitted to the Court by the United Nations and the States which are parties to the Convention on the Privileges and Immunities of the United Nations. The time-limit for written comments on written statements was fixed at 6 November 1998.

261. Within the time-limit fixed by the Order of 10 August 1998, written statements were filed by the Secretary-General of the United Nations and by Costa Rica, Germany, Italy, Malaysia, Sweden, the United Kingdom and the United States of America; the filing of a written statement by Greece on 12 October 1998 was authorized. A related letter was also received from

Luxembourg on 29 October 1998. Written comments on the statements were submitted, within the prescribed time-limit, by the Secretary-General of the United Nations and by Costa Rica, Malaysia, and the United States of America.

262. In the course of public sittings held on 7, 8 and 10 December 1998, the Court heard oral statements for the United Nations, Costa Rica, Italy and Malaysia.

263. At a public sitting held on 29 April 1999 the Court delivered its Advisory Opinion, the final paragraph of which reads as follows:

"For these reasons,

THE COURT

Is of the opinion:

(1) (a) By fourteen votes to one,

That Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Dato' Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(b) By fourteen votes to one,

That Dato' Param Cumaraswamy is entitled to immunity from legal process of every kind for the words spoken by him during an interview as published in an article in the November 1995 issue of International Commercial Litigation;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(2) (a) By thirteen votes to two,

That the Government of Malaysia had the obligation to inform the Malaysian courts of the finding of the Secretary-General that Dato' Param Cumaraswamy was entitled to immunity from legal process;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judges Oda, Koroma;

(b) By fourteen votes to one,

That the Malaysian courts had the obligation to deal with the question of immunity from legal process as a preliminary issue to be expeditiously decided in limine litis;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judge Koroma;

(3) Unanimously,

That Dato' Param Cumaraswamy shall be held financially harmless for any costs imposed upon him by the Malaysian courts, in particular taxed costs;

(4) By thirteen votes to two,

That the Government of Malaysia has the obligation to communicate this advisory opinion to the Malaysian courts, in order that Malaysia's international obligations be given effect and Dato' Param Cumaraswamy's immunity be respected;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;

AGAINST: Judges Oda, Koroma."

264. Vice-President WEERAMANTRY, Judges ODA and REZEK appended separate opinions to the Advisory Opinion; Judge KOROMA appended a dissenting opinion.

IV. THE ROLE OF THE COURT

265. At the 44th meeting of the fifty-third session of the General Assembly, held on 27 October 1998, at which the Assembly took note of the report of the Court for the period from 1 August 1997 to 31 July 1998, the President of the Court, Judge Stephen M. Schwebel, addressed the General Assembly on the role and functioning of the Court (A/53/PV.44).

266. In his address, before turning to particular elements of the work of the Court, President Schwebel referred, in a general statement on the Court's role, to its present day integration into the United Nations system of peaceful settlement of international disputes. "The Court is no longer seen solely as "the last resort" in the resolution of disputes. Rather, States may have recourse to the Court in parallel with other methods of dispute resolution, appreciating that such recourse may complement the work of the Security Council and the General Assembly, as well as bilateral negotiations." He observed that "In this combined process of dispute resolution, judicial recourse has helped parties to a dispute to clarify their positions. Parties are led to reduce and transform their sometimes overstated political assertions into factual and legal claims. This process may moderate tensions and lead to a better and fuller understanding of opposing claims. The result is that, in some cases, political negotiations have resumed and succeeded before the Court rendered judgment. In other cases, the Court's decision has provided the parties with legal conclusions which they may use in framing further negotiations and in achieving settlement of the dispute." He then referred to the second way in which the Court acted as the principal judicial organ of the United Nations — and of the world community as a whole — in that the Court is the most authoritative interpreter of the legal obligations of States in disputes between them. Indeed, this was its paramount function and antedated the establishment of the United Nations. This central role of the Court as the adjudicator of contentious differences between States represented over 70 years of achievement in settling international legal disputes. President Schwebel drew attention to the fact that in the third place, the Court, as the Organization's principal judicial organ, had acted as the supreme interpreter of the United Nations Charter and of associated instruments, such as the General

Convention on Privileges and Immunities of the United Nations, which was the focus of an advisory proceeding in progress in the Court. The Court had been the authoritative interpreter of the legal obligations of States under the Charter. The Court had performed this role in a number of advisory and contentious proceedings.

267. In the final part of his address President Schwebel noted that: "While the caseload of the Court has significantly increased, it has not enjoyed a proportional growth in its resources . . . Today its total budget is of the order of $11,000,000 a year, a smaller percentage of the budget of the Organization than in 1946. This has resulted in an enlarging gap between the conclusion of the written, and the opening of the oral, phase of a case, a gap caused by the backlog in the work of the Court. It is trite but true to say that justice delayed may be justice denied", he added. And he concluded by saying that "if the Court is to fulfil its potential as the Organization's principal judicial organ, then it must be afforded the resources to work as intensively and expeditiously as burgeoning international recourse to the Court demands. Those resources will be effectively employed, in conformity with the principles of justice and international law, to promote the settlement of international disputes and thus further the first purpose of the United Nations."

V. MUSEUM OF THE COURT

268. On 17 May 1999, the Secretary-General of the United Nations, H.E. Mr. Kofi Annan, inaugurated the Museum of the International Court of Justice (and of the other institutions in the Peace Palace) situated in the south wing of the Peace Palace.

269. Its collection presents an overview of the theme "Peace through Justice", highlighting the history of the Hague Peace Conferences of 1899 and 1907; the creation at that time of the Permanent Court of Arbitration; the consequent construction of the Peace Palace as a seat for International Justice; and the history and functioning of the Court (The genesis of the UN; the Court, and its Registry; the attire of the Judges; the Bench at present; the provenance of Judges and cases; the procedure of the Court; the world's legal systems; the case-law of the Court; prominent visitors) and of its immediate predecessor at the time of the League of Nations, the Permanent Court of International Justice.

VI. VISITS

A. Visit by the Secretary-General of the United Nations

270. On 17 May 1999, the Secretary-General of the United Nations, H.E. Mr. Kofi Annan, made an official visit to the Court. He was received by the Members of the Court and had a private exchange of views with them. Afterwards the Secretary-General inaugurated the Court's Museum.

B. Visits of Heads of State

271. On 1 October 1998 H.E. Mr. Petar Stoyanov, President of the Republic of Bulgaria was received by the Court. In the Red Room adjoining the Great Hall of Justice, the President of the Court, Judge Stephen M. Schwebel gave a welcome speech, in which he briefly evoked the cases having involved Bulgaria before the International Court of Justice and its predecessor, the Permanent Court of International Justice. He praised the country's dedication to the application of international law. "In 1990 Bulgaria turned another page of its history and chose the path of democracy and international responsibility. Its new Constitution of 1991 reflects its dedication to the rule of international law and to respect for human rights", President Schwebel said, expressing satisfaction at Bulgaria's signature, in 1992, of a declaration recognizing the compulsory jurisdiction of the Court. President Stoyanov of Bulgaria, in his response, declared that his country held the International Court of Justice in "high regard", inter alia because of its "independence" and "impartiality", and that this was the principal reason for Bulgaria's recognition of the compulsory jurisdiction of the Court. He added that in recent years special attention had been paid in his country to respect for human rights and to the rule of international law, with a view to fostering the emergence of a "justice equal for all".

272. On 20 January 1999 H.E. Mr. Martti Ahtisaari, President of the Republic of Finland, was received by the Court in the Great Hall of Justice. At a sitting attended by the diplomatic corps, representatives of the Dutch Government and Parliament, as well as other authorities of the host State, members of the Permanent Court of Arbitration, the International Criminal Tribunal for the Former Yugoslavia, the Iran-US Claims Tribunal, the Organization for the Prohibition of Chemical Weapons, the Hague Conference on Private International Law and other institutions, the President of the Court, Judge Stephen M. Schwebel, made a welcoming speech in which he first referred to Finland's contribution to the development of international law. "Finland has repeatedly demonstrated its ability to act as an intermediary between East and West", he said, recalling that the name of Helsinki had been "evocative of respect for and protection of human rights" since the adoption, in that city, of the Final Act of the Conference on Security and Co-operation in Europe in 1975. President Schwebel then evoked a dispute between Finland and Denmark which was brought to the Court at the beginning of the 1990s concerning a proposed suspension bridge over the strait of the Great Belt — a bridge which was finally built thanks to an amicable settlement reached between the Parties. In President Schwebel's words, the case "not only illustrated the Court's increasing tendency to be seen as a partner in preventive diplomacy", it also "demonstrated the spirit of mutual co-operation and good faith negotiation that have long characterised Finland's foreign relations". In his response, President Ahtisaari hailed the work being done by the International Court of Justice, which, he said, "has significantly strengthened the rule of law in international relations". He called upon States to "be more numerous . . . to recognize the compulsory jurisdiction of the Court as binding" and to be more active in submitting disputes to it which threaten international peace and security. He further pleaded in favour of a broadening of the access to the Court, indicating that the United Nations Secretariat and States should be authorized to request advisory opinions. Concerning the needs of the new millennium with regard to international law, the President of Finland stated that the Court would play a "central role", particularly in "formulating specific international regulations that exhaustively cover all aspects of transnational activities and phenomena" thanks to its "work of interpreting and applying an ever-expanding body of law".

C. Visit of Prime Minister

273. On 18 November 1998, H.E. Mr. Armen Darbinian, Prime-Minister of the Republic of Armenia, was received by the Court. In the Red Room adjoining the Great Hall of Justice, the President of the Court, Judge Stephen M. Schwebel, gave a welcome speech, in which he expressed satisfaction at Armenia's recent constitution, which "reflects Armenia's commitment to respect for international law" and "contains a catalogue of human rights, including modern economic, social and cultural rights, which remains open for additional and newly developing principles of international human rights law". He also praised the fact that Armenia, "an ancient country situated at the crossroads of continents, civilizations and religions", and which "has arisen out of its tormented history to achieve independence", was participating actively in various regional and international organizations. He recalled that Armenia's Permanent Representative to the United Nations was Chairman of the Fifth Committee of the General Assembly (Administrative and Budgetary matters). The Prime Minister of Armenia, in his response, emphasized his country's wish to reach a "balanced development" built upon economic and social programmes, but also upon the protection and promotion of human rights and fundamental freedoms. "We see the rule of law and law enforcement as two prerequisites for the formation of a civil society", he said. Mr. Darbinian further stated that Armenia viewed "regional co-operation in the Caucasus amongst the top priorities in her foreign policy" and wished "to create peace in this region — a peace based on political and economic co-operation".

VII. LECTURES ON THE WORK OF THE COURT

274. Many talks and lectures on the Court, both at the seat of the Court and elsewhere, were given by the President, Members of the Court, the Registrar and officials of the Court in order to improve public understanding of the judicial settlement of international disputes, the jurisdiction of the Court and its function in contentious and advisory cases. During the period under review the Court received a great number of groups including diplomats, scholars and academics, judges and representatives of judicial authorities, lawyers and legal professionals as well as others.

VIII. COMMITTEES OF THE COURT

275. The committees constituted by the Court to facilitate the performance of its administrative tasks are composed as follows:

(a) The Budgetary and Administrative Committee: the President, the Vice-President and Judges Bedjaoui, Guillaume, Shi, Fleischhauer, Vereshchetin and Kooijmans.

(b) The Committee on Relations: The Vice-President and Judges Herczegh and Parra-Aranguren.

(c) The Library Committee: Judges Shi, Koroma, Higgins, Kooijmans and Rezek.

(d) The Computerization Committee, under the Chairmanship of Judge Guillaume and open to all interested Members of the Court.

276. The Rules Committee, constituted by the Court in 1979 as a standing body, is composed of Judges Oda, Guillaume, Fleischhauer, Koroma, Higgins and Rezek.

IX. PUBLICATIONS AND DOCUMENTS OF THE COURT

277. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, and to the major law libraries of the world. The sale of those publications is organized by the Sales and Marketing Sections of the United Nations Secretariat, which are in contact with specialized booksellers and distributors throughout the world. A catalogue published in English and French is distributed free of charge. The next edition, in both languages, is due to appear in October 1999.

278. The publications of the Court consist of several series, three of which are published annually: Reports of Judgments, Advisory Opinions and Orders (published in separate fascicles and as a bound volume), a Bibliography of works and documents relating to the Court, and a Yearbook (in the French version: Annuaire). In the Bibliography series the latest to appear was Bibliography No. 49 (1995). The Yearbook 1997-1998 and Annuaire 1997-1998 are expected in October 1999. In the Reports series, the latest bound volume published is I.C.J. Reports 1996 which, for the first time in the history of the Court, had to be published in two separate volumes due to the large number of decisions taken by the Court during that year. The Index for the year 1997 has been delayed; its publication is expected in October 1999. The bound volume for 1997 will appear in November 1999. Due to delays occasioned by insufficient financial means for translation, it has not been possible as yet to publish the Judgment of 4 December 1998 in the case concerning Fisheries Jurisdiction (Spain v. Canada), as well as some other fascicles of the year 1998 which are now expected at the end of the current year. The publication of the ten Orders rendered by the Court on provisional measures in the cases concerning Legality of Use of Force (Yugoslavia v. Belgium), (Yugoslavia v. Canada), (Yugoslavia v. France), (Yugoslavia v. Germany), (Yugoslavia v. Italy), (Yugoslavia v. Netherlands), (Yugoslavia v. Portugal), (Yugoslavia v. Spain), (Yugoslavia v. United Kingdom), and (Yugoslavia v. United States of America) has been similarly delayed; they are expected to come out by the end of the year.

279. The Court further publishes the instruments instituting proceedings in a case before it: an Application instituting proceedings, a Special Agreement or a Request for an Advisory Opinion. The latest of these publications is the Application by which Croatia instituted proceedings against Yugoslavia "for violation of the Convention on the Prevention and Punishment of the Crime of Genocide".

280. Before the termination of a case, the Court may, pursuant to Article 53 of the Rules of Court, and after ascertaining the views of the parties, make the pleadings and documents available on request to the Government of any State entitled to appear before the Court. The Court may also, having ascertained the views of the parties, make copies of the pleadings accessible to the public on or after the opening of the oral proceedings. The documentation of each case is published by the Court after the end of the proceedings, under the title Pleadings, Oral Arguments, Documents. In that series, several volumes are in preparation, regarding the cases concerning the Frontier Dispute (Burkina Faso/Republic of Mali), Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), as well as the case concerning Border and Transborder Armed Actions (Nicaragua v. Honduras), in which the second planned volume will be published by the end of the year. The publication of the Pleadings series is in grave arrears, because of shortage of staff; the Court has, however, recently taken a number of decisions concerning the composition of these publications and the strengthening of the printing team in order to bring about a distinct improvement in their publication.

281. In the series Acts and Documents concerning the Organization of the Court, the Court also publishes the instruments governing its functioning and practice. The latest edition (No. 5) was published in 1989 and is regularly reprinted (latest reprint: 1996). An offprint of the Rules of Court is available in English and French. Unofficial Arabic, Chinese, German, Russian and Spanish translations of the Rules are also available.

282. The Court distributes press communiqués, background notes and a handbook in order to keep lawyers, university teachers and students, government officials, the press and the general

public informed about its work, functions and jurisdiction. The fourth edition of the handbook, published on the occasion of the Court's 50th Anniversary, appeared in May and July 1997 in French and English respectively. Arabic, Chinese, Russian and Spanish translations of the handbook published on the occasion of the 40th Anniversary of the Court were issued in 1990. Copies of those editions of the handbook in the above-mentioned languages are still available. A general information booklet on the Court, to be published by the Department of Public Information of the United Nations, and intended for the general public, is at present in preparation.

283. In order to increase and expedite the availability of ICJ documents and reduce communication costs the Court launched a website on the Internet on 25 September 1997, both in English and French. It features the full text of the Court's Judgments and Orders since 1996 (posted on the day they are delivered), summaries of past decisions, most of the relevant documents in pending cases (Application or Special Agreement, written and oral pleadings, the Court's decisions, press releases), a list of cases before the ICJ, some basic documents (United Nations Charter and Statute of the Court), general information on the Court's history and proceedings, and the biographies of the judges, as well as a catalogue of publications. The website can be visited at the following address: http://www.icj-cij.org.

284. In addition to the website and in order to offer a better service to persons and institutions interested in its work, the Court has introduced in June 1998 three new electronic mail (e-mail) addresses to which comments and inquiries can be sent. They read as follows: webmaster@icj-cij.org (technical comments), information@icj-cij.org (requests for information and for documents) and mail@icj-cij.org (other requests and comments). An e-mail notification system for Press Communiqués posted on the Court's website has been launched as of 1 March 1999.

285. More comprehensive information on the work of the Court during the period under review will be found in the I.C.J. Yearbook 1998-1999, to be issued in due course.

Stephen M. SCHWEBEL,
President of the International
Court of Justice.

The Hague, 6 August 1999

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